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SECOND AMENDED AND RESTATED LEASE AGREEMENT

by and between

City of Austin  
(Landlord)

and

Greater Austin Performing Arts Center, Inc. dba The Long Center  
(Tenant)

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>ARTICLE 1 LEASE OF PREMISES .....</b>                                  | <b>1</b>  |
| Section 1.1    Premises Leased; Temporary Easement Area; Access Area..... | 1         |
| Section 1.2    Habendum .....   | 2         |
| Section 1.3    Title Warranty .....                                       | 2         |
| Section 1.4    Off-Site Parking Rights.....                               | 2         |
| Section 1.5    Service Yard.....  | 3         |
| <b>ARTICLE 2 TERM OF LEASE.....</b>                                       | <b>4</b>  |
| Section 2.1    Initial Term.....  | 4         |
| Section 2.2    Renewal Term .....   | 4         |
| <b>ARTICLE 3 RENT; RECORDS .....</b>                                      | <b>4</b>  |
| Section 3.1    Base Rent .....  | 4         |
| Section 3.2    Rent .....   | 4         |
| Section 3.3    No Abatement .....   | 5         |
| Section 3.4    Reporting and Record-Keeping.....                          | 5         |
| Section 3.5    Continuous Use.....  | 6         |
| <b>ARTICLE 4 IMPOSITIONS, UTILITIES, NET LEASE.....</b>                   | <b>6</b>  |
| Section 4.1    Imposition Defined.....                                    | 6         |
| Section 4.2    Tenant's Obligations .....                                 | 6         |
| Section 4.3    Tax Contest .....  | 7         |
| Section 4.4    Evidence Concerning Impositions .....                      | 7         |
| Section 4.5    Rendition.....   | 7         |
| Section 4.6    Utilities.....   | 7         |
| Section 4.7    Net Lease.....   | 7         |
| Section 4.8    Fee Waivers.....   | 8         |
| <b>ARTICLE 5 IMPROVEMENTS .....</b>                                       | <b>8</b>  |
| Section 5.1    Existing Improvements; As Is.....                          | 8         |
| Section 5.2    Construction of the Additional Improvements.....           | 10        |
| Section 5.3    Alterations .....  | 13        |
| Section 5.4    Construction Standards and Liens.....                      | 13        |
| Section 5.5    Ownership of Improvements.....                             | 15        |
| Section 5.6    Reserves for Operation and Maintenance. ....               | 15        |
| Section 5.7    Reserves for Capital Improvements.....                     | 16        |
| <b>ARTICLE 6 USE, MAINTENANCE AND REPAIRS.....</b>                        | <b>17</b> |
| Section 6.1    Use and Management .....                                   | 17        |
| Section 6.2    Maintenance and Repairs. ....                              | 18        |
| <b>ARTICLE 7 INSURANCE AND INDEMNITY .....</b>                            | <b>18</b> |
| Section 7.1    Insurance. ....  | 18        |
| Section 7.2    Policies .....   | 20        |
| Section 7.3    Tenant's Indemnity .....                                   | 20        |
| Section 7.4    Subrogation .....  | 21        |
| Section 7.5    Coverage .....   | 21        |

|  |           |
|--|-----------|
| <b>ARTICLE 8 CASUALTY LOSS .....</b>   | <b>21</b> |
| Section 8.1    Tenant's Obligation to Restore .....  | 21        |
| Section 8.2    Notice of Damage .....  | 22        |
| Section 8.3    Election Not to Rebuild.....  | 22        |
| Section 8.4    Lease Controlling.....  | 22        |
| <b>ARTICLE 9 CONDEMNATION .....</b>  | <b>22</b> |
| Section 9.1    Total Taking.....   | 22        |
| Section 9.2    Partial Taking.....   | 23        |
| Section 9.3    Award on Partial Taking.....  | 23        |
| Section 9.4    Temporary Taking.....   | 23        |
| Section 9.5    Mortgagee's Rights.....   | 24        |
| Section 9.6    Notice of Taking; Cooperation.....  | 24        |
| <b>ARTICLE 10 ASSIGNMENT AND SUBLETTING .....</b>  | <b>24</b> |
| Section 10.1    Tenant's Right to Assign.....  | 24        |
| Section 10.2    Tenant's Right to Sublease.....  | 24        |
| <b>ARTICLE 11 TENANT'S FINANCING .....</b>   | <b>25</b> |
| Section 11.1    Tenant's Right to Encumber .....   | 25        |
| Section 11.2    Qualified Mortgagee/Credit Provider Protective Provisions .....                            | 26        |
| Section 11.3    Right of Qualified Mortgagee/Credit Provider to Prevent Lease<br>Termination .....         | 26        |
| Section 11.4    Modifications .....  | 27        |
| Section 11.5    Liability of Qualified Mortgagee .....   | 27        |
| Section 11.6    New Lease with Qualified Mortgagee Upon Termination.....                                   | 27        |
| Section 11.7    Foreclosure by Qualified Mortgagee .....   | 27        |
| Section 11.8    No Voluntary Surrender of Leasehold Estate without Consent of<br>Qualified Mortgagee ..... | 28        |
| <b>ARTICLE 12 LANDLORD'S FINANCING .....</b>   | <b>28</b> |
| <b>ARTICLE 13 WARRANTY OF PEACEFUL POSSESSION.....</b>   | <b>28</b> |
| <b>ARTICLE 14 [INTENTIONALLY OMITTED].....</b>   | <b>28</b> |
| <b>ARTICLE 15 DEFAULT AND REMEDIES .....</b>   | <b>28</b> |
| Section 15.1    Default.....   | 28        |
| Section 15.2    Remedies .....   | 29        |
| <b>ARTICLE 16 LANDLORD'S REPRESENTATIONS WARRANTIES AND<br/>COVENANTS.....</b>                             | <b>30</b> |
| Section 16.1    Authorization, Execution, Delivery .....   | 30        |
| Section 16.2    No Further Consents; No Conflicts.....   | 30        |
| Section 16.3    No Pending Litigation .....  | 30        |
| <b>ARTICLE 17 TENANT'S REPRESENTATIONS, WARRANTIES AND<br/>COVENANTS.....</b>                              | <b>31</b> |
| Section 17.1    Existence, Etc.....  | 31        |
| Section 17.2    Authorization, Execution, Delivery .....   | 31        |

|                                       |   |           |
|---------------------------------------|---|-----------|
| Section 17.3                          | No Further Consents; No Conflicts.....        | 31        |
| Section 17.4                          | No Pending Litigation.....                    | 31        |
| Section 17.5                          | No Defaults.....                              | 31        |
| Section 17.6                          | Taxes.....                                    | 32        |
| Section 17.7                          | Solvency.....                                 | 32        |
| Section 17.8                          | Franchises, Licenses, Etc. ....               | 32        |
| Section 17.9                          | No Environmental Hazards.....                 | 32        |
| <b>ARTICLE 18 MISCELLANEOUS .....</b> |   | <b>32</b> |
| Section 18.1                          | Notices.....                                  | 32        |
| Section 18.2                          | Performance of Other Party's Obligations..... | 33        |
| Section 18.3                          | Modification and Non-Waiver.....              | 33        |
| Section 18.4                          | Governing Law.....                            | 33        |
| Section 18.5                          | Number and Gender; Captions; References.....  | 34        |
| Section 18.6                          | Estoppel Certificate.....                     | 34        |
| Section 18.7                          | Severability.....                             | 34        |
| Section 18.8                          | Attorney Fees.....                            | 34        |
| Section 18.9                          | Surrender of Premises; Holding Over.....      | 34        |
| Section 18.10                         | Relation of Parties.....                      | 35        |
| Section 18.11                         | Force Majeure.....                            | 35        |
| Section 18.12                         | Non-Merger.....                               | 35        |
| Section 18.13                         | Entire Agreement.....                         | 35        |
| Section 18.14                         | Liability of Tenant.....                      | 36        |
| Section 18.15                         | Recordation.....                              | 36        |
| Section 18.16                         | Successors and Assigns.....                   | 36        |
| Section 18.17                         | Inspection.....                               | 36        |
| Section 18.18                         | Landlord's Joinder.....                       | 36        |
| Section 18.19                         | No Third Parties Benefited.....               | 36        |
| Section 18.20                         | Survival.....                                 | 37        |
| Section 18.21                         | Use of Landlord's Name.....                   | 37        |
| Section 18.22                         | No Commissions.....                           | 37        |
| Section 18.23                         | Further Assurances.....                       | 37        |
| Section 18.24                         | Authorized Representatives.....               | 37        |
| Section 18.25                         | Effect of Lease; Effective Date.....          | 37        |
| <b>EXHIBITS</b>                       |   |           |
| Exhibit A                             | Legal Description of Land                     |           |
| Exhibit A-1                           | Legal Description of Temporary Easement Area  |           |
| Exhibit A-2                           | Legal Description of Access Area              |           |
| Exhibit A-3                           | Legal Description of Service Yard             |           |
| Exhibit B                             | Permitted Title Exceptions                    |           |
| Exhibit B-1                           | The Ordinance                                 |           |
| Exhibit C                             | Description of Additional Improvements        |           |
| Exhibit D                             | Tenant's Mission Statement and Access Policy  |           |
| Exhibit E                             | Additional Insurance Requirements             |           |
| Schedule 1.4                          | Agreements to Use Off-Site Parking            |           |

## LIST OF DEFINED TERMS

|                                      |    |
|--------------------------------------|----|
| Access Area.....                     | 2  |
| Additional Improvements.....         | 8  |
| Additional Rent .....                | 4  |
| Amendment Date.....                  | 1  |
| Architect .....                      | 11 |
| Base Rent.....                       | 4  |
| Board .....                          | 17 |
| Capital Reserves Account .....       | 16 |
| Casualty.....                        | 21 |
| Claims.....                          | 20 |
| Community Events Center .....        | 3  |
| Completion.....                      | 10 |
| Construction Account.....            | 11 |
| Construction Commencement Date ..... | 10 |
| Construction Costs .....             | 11 |
| Construction Permits .....           | 12 |
| Construction Standards .....         | 14 |
| Contract Rate.....                   | 7  |
| Credit Provider .....                | 26 |
| Default.....                         | 28 |
| Effective Date.....                  | 37 |
| Force Majeure .....                  | 35 |
| GAAP .....                           | 5  |
| General Contractor .....             | 12 |
| Governmental Authorities .....       | 6  |
| Governmental Authority .....         | 6  |
| Hazardous Substances .....           | 10 |
| Imposition.....                      | 6  |
| Improvements.....                    | 1  |
| Indemnified Parties .....            | 20 |
| Initial Term.....                    | 4  |
| Land.....                            | 1  |
| Landlord .....                       | 1  |
| Lease.....                           | 1  |
| Lease Occupancy Date .....           | 4  |
| Lease Year.....                      | 5  |
| New Lease .....                      | 27 |
| O&M Reserve Fund .....               | 15 |
| Parking Garage.....                  | 3  |
| Parking Plan .....                   | 2  |
| Plans and Specifications.....        | 12 |
| Premises .....                       | 1  |
| Production Professionals .....       | 11 |
| Qualified Mortgage .....             | 26 |
| Qualified Mortgagee .....            | 25 |
| Rent .....                           | 4  |

|                                 |    |
|---------------------------------|----|
| Service Yard.....               | 3  |
| Sublease.....                   | 25 |
| Subordination Confirmation..... | 25 |
| substantially completed.....    | 10 |
| Subtenant.....                  | 25 |
| Temporary Easement Area.....    | 2  |
| Tenant.....                     | 1  |
| Tenant's Financing.....         | 11 |
| Term.....                       | 4  |
| Use Covenant.....               | 17 |

## SECOND AMENDED AND RESTATED LEASE AGREEMENT

This Second Amended and Restated Lease Agreement ("Lease") is entered into effective as of \_\_\_\_\_, 2004 ("Amendment Date") between CITY OF AUSTIN, a Texas home rule city and municipal corporation ("Landlord"), and GREATER AUSTIN PERFORMING ARTS CENTER, INC., a Texas non-profit corporation using the assumed name "The Long Center" ("Tenant").

### RECITALS

A. Landlord and Tenant entered into a Ground Lease Agreement dated effective as of April 7, 1999 covering (i) the land under, and certain land surrounding, the existing Palmer Auditorium in Austin, Texas and (ii) the permanent improvements then and thereafter located on such land.

B. Landlord and Tenant entered into an Amended and Restated Lease Agreement dated effective as of May 3, 2001 covering (i) the land under, and certain land surrounding, the existing Palmer Auditorium in Austin, Texas and (ii) the permanent improvements then and thereafter located on such land, which Amended and Restated Lease Agreement amended and restated the Ground Lease Agreement in its entirety.

C. Landlord and Tenant desire to amend and restate the Amended and Restated Lease Agreement in its entirety.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby amend and restate the Amended and Restated Lease Agreement in its entirety as follows:

### ARTICLE 1 LEASE OF PREMISES

#### Section 1.1 Premises Leased; Temporary Easement Area; Access Area.

(a) Landlord, in consideration of the rents, covenants, agreements, and conditions herein set forth that Tenant hereby agrees shall be paid, kept, and performed, including specifically the Use Covenant (as defined in Section 6.1), does hereby lease unto Tenant, and Tenant does hereby lease from Landlord, subject to the permitted exceptions to title described, in Section 1.3 the following (collectively hereafter referred to as the "Premises"):

(1) The tract of land located in Austin, Travis County, Texas described on Exhibit A hereto (the "Land"), together with all buildings, structures and improvements constructed or to be constructed on the Land (collectively, the "Improvements") and such fixtures and appurtenances as may at any time be affixed thereto (including all mahogany wood paneling located in the existing Palmer Auditorium), and any and all renewals and replacements thereof. Without limiting the generality of the foregoing, the Improvements shall include the existing Palmer Auditorium.

(2) All air rights and air space above the Land.

(b) In order to provide access to the Premises for Tenant to complete the abatement, demolition, and construction contemplated in Article 5, Landlord grants to Tenant a temporary, non-exclusive access easement across the real property of Landlord located adjacent to the Premises that is more particularly described on Exhibit A-1 hereto (the "Temporary Easement Area"). This access easement shall automatically terminate on Completion (as hereinafter defined). Tenant shall defend, indemnify and hold harmless Landlord from and against any and all losses, claims, demands, and expenses incurred by or asserted against such Landlord as a result of any intentional act or any negligent act or omission on the part of Tenant or its contractors, employees, invitees or guests with respect to the Temporary Easement Area.

(c) Upon completion of the Additional Improvements (as hereinafter defined) and commencement of operations at the Premises, and continuing thereafter for so long as Tenant has the right to possess the Premises under this Lease, Tenant will be granted a non-exclusive right of access over, upon and across, but not under, certain real property of Landlord located adjacent to the Premises and designated as the "Access Area". The Access Area will be defined after completion of the Community Events Center (as hereinafter defined) and the Additional Improvements, and after the Fire Marshall has designated Fire Lanes for both facilities. Landlord will provide a metes and bounds description of the Access Area, which will be attached to this Lease by amending it to add Exhibit A-2. The Access Area is for purposes of vehicular access to and from the Premises. Tenant's use of the Access Area will be in common with Landlord and any other parties Landlord may allow to use same, and will be subject to such rules and regulations governing the use thereof as Landlord may from time to time promulgate. No vehicles of Tenant or its employees, invitees, patrons, or guests may be parked in the Access Area and Landlord will be entitled to tow any vehicles parked in violation of this prohibition. Tenant further acknowledges that part of the Access Area passes through the Parking Garage (as defined herein) and that Tenant's access rights set forth herein may be limited by the dimensions of the Parking Garage.

Section 1.2 Habendum TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges, and appurtenances thereunto attaching or in anywise belonging, exclusively unto Tenant, its successors and permitted assigns, for the Term (as hereinafter defined), subject to termination as herein provided, and subject to and upon the covenants, agreements, terms, provisions, and limitations herein set forth.

Section 1.3 Title Warranty Landlord covenants and agrees to WARRANT AND FOREVER DEFEND the Premises unto Tenant, its successors and permitted assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through or under Landlord, but not otherwise; subject, however, to the terms of this Lease, the exceptions to title set forth on Exhibit B hereto and all applicable governmental laws, rules and regulations.

Section 1.4 Off-Site Parking Rights Tenant and Landlord shall enter into a Joint Use Parking Agreement (the "Parking Plan") authorizing Tenant (as well as Tenant's employees, patrons, customers, vendors and other invitees) to use, on a non-exclusive basis and on the same terms and conditions as same are available to the general public from time to time, (a) the Lester E. Palmer parking garage located on property adjacent to the Premises (the "Parking Garage"),



(b) the One Texas Center parking garage, and (c) the Town Lake Center parking garage. Such right to use only applies so long as Landlord retains ownership of such facilities and same are used for parking purposes and the details of such use will be set forth in the Parking Plan, which will be agreed upon and executed by Landlord and Tenant on or before September 1, 2006. The Parking Plan must reflect the terms of the preceding sentence as well as the fact that any revenue generated from the Parking Garage and other parking areas covered thereby shall belong to Landlord, as the owner and operator of such facilities, and Tenant shall have no right, title and/or interest in and to any portion of such revenue. Tenant's right to use the parking areas identified in the Parking Plan will also be subject to any rights of other parties under written agreements with Landlord existing as of the Amendment Date, which agreements are listed on Schedule 1.4 attached hereto. It is understood and agreed by the parties that the Parking Plan will effect Landlord's intention to minimize surface parking on its property adjacent to the Premises. In addition, the parties acknowledge and agree that Landlord will have the right to further assign daytime parking rights in the parking areas in its sole discretion in order to maximize the use of the parking areas. Further, Landlord and Tenant also acknowledge that adequate access to the Premises is critical to achieving Tenant's mission. Adequate access includes (a) surface streets that allow easy approach and departure to and from the Premises; (b) an amount of limited parking on the Premises near the entrance(s) to the Improvements for handicapped and other special patrons, and (c) sufficient parking within convenient walking distance of the Premises to accommodate simultaneous events at as many as four (4) performance venues within the Improvements, plus events at the Lester E. Palmer Events Center (the "Community Events Center") and the Town Lake Cultural Park.

Section 1.5 Service Yard. Tenant's rights in that portion of the Premises (the "Service Yard") described on Exhibit A-3 attached hereto and incorporated herein for all purposes are non-exclusive, as such Service Yard is essential to the efficient use and operation of the Premises and the Community Events Center. Landlord reserves the right to use the Service Yard in-common with Tenant. Further, Landlord reserves the right to establish such non-discriminatory rules and regulations as Landlord deems necessary or appropriate in its reasonable discretion to govern Landlord's and Tenant's use of the Service Yard in order to ensure a coordinated and efficient use of the Improvements and the Community Events Center. No improvements may be constructed on the Service Yard, with the exception of a transformer and certain mechanical facilities shown on Exhibit A-3 each of which may be constructed, in the approximate location, shown for same on Exhibit A-3 provided neither the proposed transformer nor any of said mechanical facilities interferes with either (i) use of the Service Yard by either party or (ii) truck or other vehicular access to each party's respective projects. The Parties acknowledge that the Parking Plan will allow a limited number of parking spaces on the Service Yard, near the entrance to the Improvements, which may only be used by handicapped and other special patrons during (i) performances at the Premises; and (ii) such other times as Landlord may consent to in writing from time to time. No one may use the Service Yard for any other vehicular parking, including when no events are occurring, without Landlord's prior written consent; provided that the Austin Convention Center Department Director may grant verbal consent to such parking in emergencies and other situations said Director deems appropriate. Any rules adopted by Landlord for use of the Service Yard will expressly recognize these facts. No parking shall be allowed on any unpaved portion of the Premises and no paved parking area may be constructed on any portion of the Premises without the prior written consent of Landlord. Landlord reserves the right to enter upon the Premises and remove any vehicles parked in violation of the terms of this Section 1.5 without notice or opportunity to cure being given Tenant. Landlord also reserves

the right to post such signage, at its sole cost and expense, on the Premises as may be required by applicable law to ensure its ability to tow any illegally parked vehicles. Tenant may replace such signage at its sole cost and expense with more aesthetically pleasing signage at Tenant's sole expense, provided Tenant obtains Landlord's prior written consent to doing so and such signage meets all requirements of applicable law for such signs.

## **ARTICLE 2** **TERM OF LEASE**

### **Section 2.1 Initial Term.**

This Lease became effective as of the Effective Date (as hereinafter defined) and Tenant's right to possession of the Premises commenced on August 9, 2002 (the "Lease Occupancy Date"). Unless sooner terminated as provided in this Lease, this Lease continues in effect for an initial term ("Initial Term") beginning on the Lease Occupancy Date and ending at midnight Austin, Texas, time, on the date that is fifty (50) years after Completion.

**Section 2.2 Renewal Term** At the end of the Initial Term, provided that no Default (as hereinafter defined) by Tenant then remains uncured beyond any applicable cure period provided herein, Tenant shall be entitled to a retention referendum election proposition before the voters of the City of Austin to consider renewing and extending this Lease for an additional term of not less than 25 years. Notwithstanding the foregoing, if, as of the date that is one (1) year prior to the expiration of the Initial Term, no voter approval is required to renew and extend the Initial Term and no Default by Tenant then remains uncured beyond any applicable cure period provided herein, Tenant may renew and extend this Lease for an additional term of 25 years (or such longer term as the parties may agree) upon written notice to Landlord at least 11 months prior to the expiration of the Initial Term. Any extension of this Lease by Tenant pursuant to the preceding sentence shall be on the same terms and conditions set forth in this Lease unless agreed to otherwise in writing by Landlord and Tenant. The "Term" consists of the Initial Term and any extension thereof pursuant to this Section 2.2 but subject to earlier termination pursuant to this Lease.

## **ARTICLE 3** **RENT; RECORDS**

**Section 3.1 Base Rent** Tenant has paid to Landlord base rent for the Initial Term in the amount of Fifty Dollars (\$50.00) ("Base Rent").

**Section 3.2 Rent** Any amounts required to be paid by Tenant to Landlord under the terms of this Lease other than Base Rent are herein from time to time collectively referred to as "Additional Rent." Base Rent and Additional Rent are herein collectively referred to as "Rent."

Section 3.3 No Abatement Except as otherwise expressly provided in Article 9, no happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder to pay Rent, or entitle Tenant to an abatement of Rent; and Tenant waives any rights now or hereafter conferred upon it by statute, proclamation, decree, order, or otherwise, to any abatement, diminution, reduction, offset, or suspension of Rent because of any event, happening, occurrence, or situation whatsoever.

#### Section 3.4 Reporting and Record-Keeping.

(a) Tenant will provide Landlord with a written report no later than July 1st of each year during the Term, beginning on the July 1st first following the date Tenant opens for business at the Premises (each such year period being a "Lease Year"), that describes the way in which Tenant will provide access to the Premises to Austin's small and/or minority-based arts organizations for the upcoming year, and containing specific information on the number of hours or days to be allocated, the space and facilities within the Premises to be utilized and the fees to be charged by Tenant for such access. This report must describe a program that will provide a minimum goal of 50% of available days for use of the "black box" performance space (as such term is used in Exhibit C) within the Premises to be set aside for Austin's small and/or minority-based performing arts organizations. The term "small and minority-based performing arts organizations" as used in this Lease must be construed consistently with the goals of Tenant's Mission Statement and Access Policy (a current copy of which is attached hereto as Exhibit D), as the same may be amended from time to time, or as otherwise agreed by Landlord and Tenant. The minimum goal may be changed by agreement of Landlord and Tenant. In addition, commencing on the 45th day of the second Lease Year, and continuing on the 45th day of each Lease Year thereafter throughout the Term, Tenant shall present a report to Landlord showing the public use and access to the Premises provided by Tenant to Austin's small and minority-based performing arts organizations during the preceding year.

(b) Tenant shall keep in the Premises or at some other location furnished in writing to, and reasonably approved by, Landlord, a permanent, accurate set of books and records, separate and apart from any of its other transactions unrelated to this Lease, pertaining to all aspects of the construction and maintenance of the Improvements and the operation of the business conducted by Tenant in the Premises, and all supporting records such as tax reports, banking records, cash receipts journals, rent rolls and other sales records. All such books and records must be retained and preserved for at least 36 months after the end of the Lease Year to which they relate, and are subject to inspection and audit by Landlord and its agents at all reasonable times. In addition, Tenant shall cause all of its Subtenants (as hereinafter defined) under Subleases (as hereinafter defined) that provide for percentage rent of any kind to maintain comparable records and information, and to make such information available both to Tenant and Landlord hereunder, on reasonable notice from such person.

(c) All books, records and accounting-related reports required or provided for under this Lease must be maintained and prepared in accordance with GAAP as it pertains to "non-profit corporation accounting." "GAAP" means such accounting practice as, in the opinion of the independent accountants of recognized standing retained by Tenant and reasonably acceptable to Landlord, conforms at the time to generally accepted accounting principles, consistently applied. Generally accepted accounting principles means those principles and practices (i) that are

recognized as such by the Financial Accounting Standards Board (or its successor), and (ii) that are consistently applied for all periods after the date hereof so as to reflect properly the financial condition, and results of operations and changes in financial position, of Tenant, as same pertains exclusively to Tenant's activities on the Premises.

Section 3.5 Continuous Use Tenant shall in good faith continuously throughout the Term conduct its business in the entire Premises for the purposes for which they are let, in such a manner as to promote and enhance the performing arts in Austin, Texas.

#### ARTICLE 4 IMPOSITIONS, UTILITIES, NET LEASE

Section 4.1 Imposition Defined The term "Imposition" means all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees, and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, that shall or may during the Term be assessed, levied, charged, confirmed or imposed by any public or quasi-public authority upon or accrued or become a lien on (a) the Premises or any part thereof; (b) the Improvements now or hereafter comprising a part thereof; (c) the appurtenances thereto or the sidewalks, streets, or vaults adjacent thereto; (d) the rent and income received by or for the account of Tenant from any Subtenant or for any use or occupation of the Premises; (e) such franchises, licenses, and permits as may be pertinent to the use of the Premises; or (f) any documents to which Tenant is a party creating or transferring an interest or estate in the Premises. Impositions shall not include any income tax, capital levy, estate, succession, inheritance or transfer taxes, or similar tax of Landlord; any franchise tax imposed upon any owner of the fee of the Premises; or any income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Landlord under this Lease by any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority (hereinafter each of the foregoing governmental bodies are singularly referred to as a "Governmental Authority" and collectively referred to as "Governmental Authorities"). If at any time during the Term the present method of taxation shall be so changed that the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and improvements thereon shall be discontinued and in whole or partial substitution therefor, taxes, assessments, levies, impositions, or charges shall be levied, assessed, and/or imposed wholly or partially as a capital levy or otherwise on the rents received from said real estate or the rents reserved herein or any part thereof, then such substitute taxes, assessments, levies, impositions, or charges, to the extent so levied, assessed, or imposed, shall be deemed to be included within the term Impositions.

Section 4.2 Tenant's Obligations During the Term, Tenant will pay as and when the same shall become due all Impositions except for the payment of fees waived by Landlord as set forth in Section 4.8. Impositions that are payable by Tenant for the tax year during which the Lease Occupancy Date occurs as well as during the year in which the Term ends shall be apportioned so that Tenant shall pay its proportionate share of the Impositions payable by Tenant for such periods of time. Where any Imposition that Tenant is obligated to pay may be paid pursuant to law in installments, Tenant may pay such Imposition in installments as and when such installments become due. Tenant shall deliver to Landlord evidence of due payment of all Impositions Tenant is obligated to pay hereunder concurrently with the making of such payment.

Commencing on the Effective Date, Tenant shall pay for all debts and expenses incurred by it in connection with the Premises, including, but not limited to, all costs and fees in connection with its due diligence and feasibility investigations.

**Section 4.3 Tax Contest** Tenant may, at its expense, contest the validity or amount of any Imposition for which it is responsible, in which event the payment thereof may be deferred, as permitted by law, during the pendency of such contest, if diligently prosecuted. As a condition precedent to Tenant's rights under the preceding sentence, 15 days prior to the date any contested Imposition shall become due, Tenant shall pay such Impositions under protest in the manner provided by applicable law. Nothing herein contained, however, allows any Imposition to remain unpaid for such length of time as would permit the Premises, or any part thereof, to be sold or seized by any Governmental Authority for the nonpayment of the same. If at any time, in the judgment of Landlord reasonably exercised, it becomes necessary to do so, Landlord may, after written notice to Tenant and Tenant's failure to perform within 15 days thereafter, under protest if so requested by Tenant, pay such amount of the Impositions as may be required to prevent a sale or seizure of the Premises or foreclosure of any lien created thereon by such item. The amount so paid by Landlord shall be promptly paid on demand by Tenant to Landlord as Additional Rent, together with interest thereon at a rate per annum equal to the lesser of (a) the maximum applicable non-usurious rate or (b) a variable rate equal to the annual rate of interest identified as the "prime rate" in the "Money Rates" column published in the *Wall Street Journal* (the "Contract Rate") in effect from time to time, from the date advanced until paid. Tenant shall promptly furnish Landlord with copies of all proceedings and documents with regard to any tax contest, and Landlord may, at its expense, participate therein. In the event the Contract Rate is undefined because there is no applicable non-usurious rate or such rate is infinity, or if the *Wall Street Journal* ceases to publish a prime rate, then the "Contract Rate" means 18% per annum.

**Section 4.4 Evidence Concerning Impositions** The certificate, advice, bill, or statement issued or given by the appropriate officials authorized by law to issue the same or to receive payment of any Imposition of the existence, payment, nonpayment, or amount of such Imposition is prima facie evidence for all purposes of the existence, payment, nonpayment, or amount of such Imposition.

**Section 4.5 Rendition** Tenant shall render the Premises for each Governmental Authority imposing Impositions thereon and may, if Tenant shall so desire, endeavor at any time or times to obtain a lowering of the valuation of the Premises for any year for the purpose of reducing ad valorem taxes thereon and, in such event, Landlord will, at the request of Tenant, cooperate in effecting such a reduction, provided Landlord shall not be required to incur any expense in connection therewith without its prior consent, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 4.6 Utilities** During the Term, Tenant shall pay or cause to be paid all charges for gas, electricity, light, heat, air conditioning, power, cable television, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Premises, and all water rents, sewer service charges, or other similar charges levied or charged against, or in connection with, the Premises.

**Section 4.7 Net Lease.** Landlord shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the

financing, ownership, construction, maintenance, operation, or repair of the Premises, except for the fire and extended coverage on the Premises described in Article 7 and the casualty provisions described in Article 8. It is expressly understood and agreed that this is a completely net lease except as provided in Articles 7 and 8.

Section 4.8 Fee Waivers To the extent permitted by applicable law, Landlord agrees to waive all capital recovery fees, impact fees, site plan fees, building permit fees, inspection fees, and charges that it would otherwise charge as development or inspection fees in connection with Tenant's construction of the additional improvements to the Premises described in Exhibit C hereto (collectively, the "Additional Improvements") and its use of the Premises.

## **ARTICLE 5** **IMPROVEMENTS**

### **Section 5.1 Existing Improvements: As Is.**

(a) TENANT ACKNOWLEDGES THAT IT IS LEASING THE IMPROVEMENTS CURRENTLY CONSTITUTING A PART OF THE PREMISES "AS IS, WHERE IS, WITH ALL FAULTS" AND THAT LANDLORD IS MAKING NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF SUCH IMPROVEMENTS. TENANT ACKNOWLEDGES AND AGREES THAT LANDLORD HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (I) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (II) THE INCOME TO BE DERIVED FROM THE PREMISES, (III) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES THAT TENANT MAY CONDUCT THEREON, (IV) THE COMPLIANCE BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (V) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, (VI) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PREMISES, (VII) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PREMISES, OR (VIII) ANY OTHER MATTER WITH RESPECT TO THE PREMISES, AND SPECIFICALLY, THAT LANDLORD HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PREMISES, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER. TENANT FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, TENANT IS RELYING SOLELY ON

ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY LANDLORD. TENANT FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PREMISES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT LANDLORD HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. LANDLORD IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PREMISES, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE FINANCIAL TERMS OF THIS LEASE HAVE BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PREMISES IS LEASED BY LANDLORD TO TENANT SUBJECT TO THE FOREGOING. NOTHING IN THIS SECTION 5.1(A) SHALL OPERATE OR BE CONSTRUED TO IMPAIR OR NEGATE THE TITLE WARRANTIES CONTAINED IN SECTION 1.3.

(b) As between Landlord and Tenant, Tenant is solely responsible for providing security for the Premises, and those traveling to and from them, as Tenant deems necessary or desirable under the circumstances. The circumstances referred to in the preceding sentence include both those as they exist at the present time, and as they change at any time and from time to time during the Term.

(c) Tenant is responsible for conducting its own due diligence in connection with the Premises to determine that they are suitable for Tenant's intended use. Tenant shall obtain an engineering report or structural evaluation of the Premises prior to its construction of the Additional Improvements, and shall provide a copy to Landlord as part of Landlord's review and approval of the Plans and Specifications (as hereinafter defined).

(d) Landlord has notified Tenant that the Premises contains asbestos materials, and that asbestos remediation, removal and/or management may be required in connection with Tenant's construction of the Additional Improvements. Landlord has provided Tenant with a copy of the asbestos report and management plan in Landlord's possession, without in any way warranting the completeness or accuracy of the information contained therein. Landlord shall have no liability to Tenant, and Tenant shall have no claim or cause of action against Landlord, with respect to the accuracy or completeness of such report or plan. Landlord has not performed a lead-based paint assessment or an environmental site assessment of the Premises.

(e) Landlord will conduct a Phase I environmental site assessment on the Land at the time it conducts one in connection with the contemplated construction of the Community Events Center and the Parking Garage and will provide Tenant with a copy of the report, without in any way warranting the completeness or accuracy of the information contained therein. Landlord shall have no liability to Tenant, and Tenant shall have no claim or cause of action against Landlord, with respect to the accuracy or completeness of such report. Tenant will, at its own expense, conduct a lead-based paint survey of the Premises and have the asbestos report reviewed by a licensed environmental asbestos consultant or management planner to recommend an abatement or remediation plan in connection with Tenant's construction of the Additional Improvements and operation of the Premises, which plan must be reviewed and approved by

Landlord on or before commencement of construction of the Additional Improvements. Tenant will be responsible for the cost of remediation or abatement required in connection with its construction of the Additional Improvements and its use and occupancy of the Premises.

(f) Tenant must comply during the Term with the asbestos management and abatement plan for the Premises and with all legal requirements applicable to Tenant's use and/or occupancy of the Premises, and shall require its employees, invitees, Subtenants, and parties with whom it contracts to so comply. Tenant shall notify Landlord immediately in the event of a release of asbestos or any other Hazardous Substances (as defined herein) at the Premises. Tenant shall prevent the use, generation, release, discharge, disposal or transportation of any Hazardous Substances on, under, in, above, to or from the Premises during the Term except in the ordinary course of business in compliance with applicable laws. Tenant shall indemnify, defend, and hold Landlord harmless from and against (i) any loss, cost, expense (including, without limitation, court costs and reasonable attorneys' fees), claim, or liability arising out of or in any way connected with use of the Premises during the Term, including, but not limited to, environmental contamination or release, by Tenant, its officers, employees, agents, representatives, invitees, and parties with whom Tenant contracts.

(g) Except for purposes of Section 5.1(a) hereof, as used in this Lease, the term "Hazardous Substances" means any substance that has toxic, corrosive, flammable or reactive properties that is regulated by the State of Texas or the United States Government. Hazardous Substances include but are not limited to asbestos, polychlorobiphenyls (PCBs), flammable explosives, radioactive materials, chemical carcinogens, pollutants, effluents, contaminants, emissions and petroleum

(h) Notwithstanding anything to the contrary contained herein, Tenant is authorized to (i) abate and remediate Hazardous Substances on the Premises and (ii) demolish so much of the Improvements as are necessary to construct the Additional Improvements at any time after it has obtained all required regulatory approvals and permits for such activities and has complied with the applicable insurance requirements set forth in Exhibit E hereto. Landlord, in its capacity as owner of the Premises, hereby grants whatever permission is necessary for Tenant to apply for and obtain such approvals and permits from the City of Austin.

#### Section 5.2 Construction of the Additional Improvements.

(a) No later than the date that is 30 days after issuance of the last of the Construction Permits (as hereinafter defined) ("Construction Commencement Date"), Tenant shall begin construction of the Additional Improvements and shall diligently pursue the same to completion within three years after the Construction Commencement Date. For purposes of the foregoing, "Completion" means that (i) the Additional Improvements have been substantially completed in accordance with the Plans and Specifications, and (ii) Tenant has obtained a final certificate of occupancy and all other governmental approvals for the Additional Improvements. For purposes hereof "substantially completed" means finally completed but for minor items of punch list work that do not interfere with Tenant's use of the Premises or Tenant's ability to obtain a final certificate of occupancy for the Premises and which can be completed within 30 days. Tenant shall pursue completion of said punch list items with all reasonable diligence and cause same to be completed within 45 days of the date on which the Premises are substantially completed. Tenant shall secure a written commitment for financing the construction of the Additional



Improvements ("Tenant's Financing") on terms and conditions acceptable to Tenant and reasonably acceptable to Landlord. Tenant shall have the right to commence construction of the Additional Improvements only after (i) Landlord has approved the Plans and Specifications, which approval shall not be unreasonably withheld, conditioned or delayed, (ii) Landlord has verified that Tenant has instituted procedures designed to achieve the MBE/WBE program goals of the City of Austin in connection with the design and construction of the Additional Improvements, (iii) Tenant has secured the written commitment for Tenant Financing on terms and conditions acceptable to Tenant and reasonably acceptable to Landlord, and (iv) Tenant has received a commitment for at least 70% of the Construction Costs, based upon a combination of the Tenant Financing, cash, and pledges, acceptable to and confirmed by Landlord, all of which are available and restricted for the purpose of payment of the Construction Costs. Landlord may extend the Construction Commencement Date and/or the date for completion of the Additional Improvements upon good cause shown. Design and construction of the Additional Improvements must be performed in a good and workmanlike manner and in compliance with the City of Austin's MBE/WBE program requirements and all applicable laws, including Americans with Disabilities Act requirements applicable to municipally-owned and operated facilities.

(b) No later than 60 days after approval by the Austin City Council of this Lease, Tenant will provide Landlord with a feasibility report prepared by an independent third party professional reasonably acceptable to Landlord that covers the estimated costs to design and construct the Additional Improvements ("Construction Costs"), operating costs for the Premises for at least the first five years after final completion of the Additional Improvements, and revenue and expenses from the Premises. Landlord shall have the right to review and approve the estimated Construction Costs and operating costs in such report, such approval not to be unreasonably withheld, conditioned or delayed. Within 30 days after approval by the Landlord of the feasibility report, Landlord will confirm Tenant's pledges in accordance with paragraph 5.2(a) above. In addition to the requirements of paragraph 5.2(a) above, construction may not commence until the Landlord has approved the feasibility report and Tenant Financing and confirmed the pledges.

(c) Prior to the commencement of construction of the Additional Improvements, Tenant shall establish a separate segregated series of construction accounts (collectively, the "Construction Account") at one or more financial institutions of its choosing whose accounts are federally insured. The Construction Account may be maintained by Tenant at the financial institution, if any, that serves as trustee for Tenant's Financing. The Construction Account may be used only for the purpose of drawing down sums for the payment of the Construction Costs and for debt service on Tenant's Financing and no other funds may be commingled in the Construction Account. Tenant shall furnish Landlord with satisfactory information on the Construction Account and the amounts on deposit therein prior to commencement of construction of the Additional Improvements and, at Landlord's request, at any time during the construction of the Additional Improvements.

(d) Tenant will engage an architect ("Architect") and, if Tenant elects, one or more civil engineering, asbestos abatement consultants and other professional consultants selected by Tenant (collectively, the "Production Professionals") to prepare a complete set of plans and specifications for the Additional Improvements, including overall layouts, layouts within buildings, landscaping and exterior amenities, elevations, parking, mechanical, plumbing and electrical drawings, asbestos abatement or management plans, and decorating plans, together

with detailed specifications for the types, brands, quality, color and other characteristics of all the constituent components thereof and otherwise showing all aspects of the proposed Additional Improvements in sufficient detail to obtain all required regulatory approvals (collectively, the "Plans and Specifications"). Tenant shall use its best efforts to submit the Plans and Specifications to Landlord no later than 45 days before the Construction Commencement Date. Landlord's approval of the design of interior modifications of the Premises shall be limited to a determination that such modifications are consistent with good design principles, requirements that Landlord may have for its owned facilities, including requirements imposed by Landlord's insurance carrier, and Tenant's mission statement to create and manage a state-of-the-art multi-venue facility that will host the broad spectrum of Austin's performing arts organizations. Notwithstanding the fact that Landlord may have approved the Plans and Specifications (in its capacity as Landlord and/or in its regulatory capacity), Tenant and its Architect, Production Professionals and General Contractor (as hereinafter defined) shall at all times be solely responsible for defects in the design, materials, workmanship and construction of the Additional Improvements (including their joinder with and effect on the Land), and for causing and maintaining compliance of the Additional Improvements with all applicable laws and regulations (including without limitation the Americans With Disabilities Act). In connection with Landlord's approval of the Plans and Specifications, Tenant will obtain from the Architect and/or Production Professionals a certification to Landlord in writing that, in such party's reasonable professional judgment, (i) the Plans and Specifications comply with all zoning laws as well as all other statutes, ordinances, rules, regulations and other applicable laws of any Governmental Authorities relating to the Premises and (ii) the Premises, when all Additional Improvements are completed, can legally be used for its intended purpose and that there will be no violation of existing zoning laws or other statutes, ordinances, rules, regulations or other applicable laws of any Governmental Authorities relating to the Premises.

(e) Tenant will apply for all required regulatory approvals and permits for construction of the Additional Improvements (the "Construction Permits") as soon as possible after Landlord approves the Plans and Specifications and agrees to use its good faith reasonable efforts to obtain all such Construction Permits. Landlord (in its capacity as Landlord only) agrees to fully cooperate with Tenant in applying for the Construction Permits, including the execution of applications; provided, however, that Landlord shall not be obligated to expend any funds or incur any expenses in connection therewith. Except as provided in Section 4.8, nothing in this Lease shall be deemed to bind Landlord in its capacity as a regulatory authority.

(f) Tenant and the general contractor it hires to construct the Additional Improvements (the "General Contractor") may, without Landlord's consent, execute minor change orders to the Plans and Specifications in order to address the concerns of regulatory authorities charged with permitting and inspecting the construction of the Additional Improvements or to make other minor changes that they deem necessary or desirable. Landlord's prior written consent is required for any change order that (i) may result in a change in the anticipated total Construction Costs of more than 5% in the aggregate from the original budgeted total Construction Costs, or (ii) results in a material alteration to the design, materials or methods previously approved by Landlord or a material diminution in the quality of the construction materials.

(g) Subject to the interest(s) of the Architect and /or the Production Professionals, ownership of the Plans and Specifications, as well as any and all subsequent change orders and all environmental, marketing, mechanical, electrical and other engineering studies, reports, plans

and other materials in any way relating to the Premises and/or any Improvements thereto, will be in Tenant and Landlord during the Term. Tenant and Landlord will each have the absolute right to the use thereof in connection with the Premises during the Term without the consent of the other. Subject to the interest(s) of the Architect and/or the Production Professionals, ownership of the Plans and Specifications vests in Landlord at the same time that it vests in Tenant, and is not affected by any termination of this Lease, no matter how such termination may occur. Notwithstanding the foregoing, Tenant shall be solely responsible for payment of all of the fees and expenses in connection with the preparation and use of the Plans and Specifications, and will obtain such written consents and confirmations as Landlord may request from the appropriate parties allowing Landlord's use and/or ownership (if applicable) of the Plans and Specifications during and after the Term. Landlord shall be entitled to copies of the Plans and Specifications at any time and from time to time, either from Tenant or directly from the authors thereof, upon payment of an amount equal to the reproduction costs thereof only.

(h) In contracting with the Architect, the Production Professionals and the General Contractor, Tenant will require that each such contract provide that it can be assumed by Landlord in the event of a termination of this Lease due to an uncured Default by Tenant in the obligations to design and construct the Additional Improvements. Tenant shall also require that such professionals maintain the construction period insurance and payment and performance bonds required in Article 7 or Tenant shall be obligated to maintain such insurance and bonds at its own cost and expense. In the event of any material defects in design, materials or workmanship resulting from the work of the Architect, the Production Professionals and/or under the construction contract between Tenant and the General Contractor, Tenant agrees to pursue any causes of action it may have against the appropriate party, or at the option and request of Landlord, assign such cause of action to Landlord.

(i) During the term of construction of the Additional Improvements, Tenant will provide Landlord with a quarterly planning report, due on or before the 15th day of each January, April, July, and October, including (i) a critical path method construction schedule for substantial and final completion and (ii) a cash flow projection covering the following 12 months in sufficient detail to show that the Additional Improvements will be constructed to Completion.

**Section 5.3 Alterations** At any time and from time to time during the Term, after final completion of the Additional Improvements, Tenant may perform such alterations, renovations, repairs, refurbishments, and other work with regard to any Improvements as Tenant may elect, provided that the same is done in accordance with the Construction Standards (as hereinafter defined), and further provided that if the construction costs for any such work (whether such work is evidenced by one or more contracts) exceed the sum of \$1,000,000, then written approval of Landlord (including Landlord's approval of the plans and specifications therefor in accordance with the standards prescribed in Section 5.2(d)) must be obtained prior to the commencement thereof. If Landlord's approval is required, it will not be unreasonably withheld, conditioned or delayed, but may be conditioned on approval of the detailed plans and specifications therefor and confirmation that Tenant has sufficient funds available to it to perform the work. Nothing in this Section 5.3 will be deemed to permit a change in the use of the Premises as described in Section 6.1 without the prior written consent of Landlord, which consent is in the absolute discretion of Landlord.

#### Section 5.4 Construction Standards and Liens.

(a) All Improvements to the Premises during the Term (including but not limited to the Additional Improvements, and regardless of whether Landlord's consent or approval is required or obtained) must be constructed, and any and all alterations, renovations, repairs, refurbishments, or other work with regard thereto must be performed, in accordance with the following "Construction Standards" (herein so called):

(1) all such construction or work must be performed in a good and workmanlike manner in accordance with plans and specifications therefor approved in writing by Landlord prior to the commencement thereof, in good industry practice for the type of work in question, and the materials and workmanship thereof must be of a quality greater than or at least equal to the Additional Improvements, as called for in the Plans and Specifications;

(2) all such construction or work must be designed and constructed in compliance with all applicable building codes, ordinances, and other laws or regulations of Governmental Authorities having jurisdiction, and in compliance with the City of Austin's MBE/WBE program requirements for its construction projects, and the Americans with Disabilities Act requirements applicable to municipally-owned and operated facilities;

(3) no such construction or work may be commenced until all licenses, permits, and authorizations required of all Governmental Authorities having jurisdiction necessary to commence construction have been obtained;

(4) Tenant shall have obtained and shall maintain in effect the insurance coverage required in Article 7 with respect to the type of construction or work in question; and

(5) after commencement, such construction or work must be prosecuted with due diligence to its completion, subject to Force Majeure (as hereinafter defined).

(b) Tenant shall have no right, authority, or power to bind Landlord or any interest of Landlord in the Premises for any claim for labor or for material or for any other charge or expense incurred in construction of any Improvements or performing any alteration, renovation, repair, refurbishment, or other work with regard thereto, nor to render Landlord's interest in the Premises liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Tenant shall in no way be considered as the agent of Landlord in the construction, erection, or operation of any such Improvements. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Premises are filed, Tenant shall promptly pay or bond such liens to Landlord's reasonable satisfaction or otherwise obtain the release or discharge thereof.

(c) If during any construction, alteration, renovation, repair, refurbishment or other work undertaken in connection with the Improvements, Tenant damages any property of Landlord (other than damage occurring during construction of the Additional Improvements to property of Landlord which is to be, and is, renovated as part of the Additional Improvements), Tenant shall be responsible for such damage and shall repair and remedy same to Landlord's satisfaction and specifications at Tenant's sole cost and expense.

Section 5.5 Ownership of Improvements Title to all the Improvements now or hereafter located on the Land (including, without limitation, the Additional Improvements) is and shall remain vested in Landlord immediately upon the attachment thereof to the Land and/or other Improvements on the Land. Upon the expiration or earlier termination of this Lease, provided that no Default by Tenant then remains uncured beyond any applicable cure period provided herein, Tenant shall have the right to remove and retain only those items of movable trade fixtures, furniture, equipment and personal property agreed to by Tenant and Landlord, provided that Tenant repairs any damage caused by reason of such removal. Tenant may remove fixtures and equipment in the ordinary course of business in connection with the repair or replacement thereof, so long as any repairs are accomplished as soon as reasonably possible and all replacements are made with items of equal or greater quality than the replaced items were, when they were new.

#### Section 5.6 Reserves for Operation and Maintenance.

(a) At the time of Completion, Tenant shall be required to demonstrate that it has sufficient cash reserves in the capital reserves account and its operating account to fund any operational expenses and to adequately maintain the Premises in accordance with the projections and estimates contained in the feasibility report required in Section 5.2(b).

(b) Tenant pledges to establish and maintain an operating and maintenance reserve fund ("O&M Reserve Fund") at all times during the Term from and after the date of Completion in the minimum amount of \$10,000,000 and any additional amount required to cover for the current Lease Year the cost of paying for the operation, and if required, the maintenance, of the Premises in accordance with the terms of this Lease, to the extent (i) the projected income from the Premises, including planned fundraising levels; and (ii) Tenant's other cash reserves (whether same are held directly by Tenant or indirectly through a foundation, support organization, trust or otherwise), are not sufficient to cover such costs. The O&M Reserve Fund shall only be used for such purpose. The O&M Reserve Fund will consist of one or more accounts at one or more financial institutions whose accounts are federally insured against loss, or will be otherwise invested in a manner reasonably acceptable to Landlord, and shall consist of not less than \$10,000,000 in the aggregate, unless Tenant demonstrates to Landlord's reasonable satisfaction, through a mutually-acceptable third party financial consultant, that a lesser amount is sufficient for a particular Lease Year to meet the projected needs for that Lease Year. At least \$7,500,000 of the O&M Reserve Fund will be placed in trust or otherwise restricted in a manner reasonably acceptable to the parties for the purpose of generating income to fund the cost of operation and, if required, maintenance of the Premises and the trust instrument or other restrictive covenant instrument will provide that the funds will be maintained for and dedicated solely to such purposes and the income from such funds will be available to and inure to the benefit of any successor or assign of Tenant during the Term. The \$2,500,000 balance of the O&M Reserve Fund may be used to fund the cost of operation and, if required, maintenance of the Premises, subject to the conditions herein. Tenant shall also provide Landlord immediate written notice of any funds withdrawn from the \$2,500,000 balance of the O&M Reserve Fund, and shall provide at the same time a detailed financial plan for avoiding future withdrawals from the O&M Reserve Fund and for replenishing the fund. Landlord, in its sole discretion, may authorize the elimination of a portion of the O&M Reserve Fund, upon Tenant's request and if Tenant demonstrates to Landlord's satisfaction that the portion of the fund is no longer necessary. Tenant shall provide Landlord with complete and accurate information on all accounts

constituting the O&M Reserve Fund (including the names of the financial institutions, the account numbers, and the amounts on deposit) on or before the date of Completion, within 45 days after the beginning of each Lease Year, and at any other time requested by Landlord. Tenant shall not change financial institutions or alter the accounts or investments without the prior written consent of Landlord, which consent shall not be unreasonably withheld, but which may be conditioned on Tenant's executing new documents to evidence and perfect Landlord's first lien security interest in the \$2,500,000 balance of the O&M Reserve Fund. To the extent that the \$2,500,000 balance of the O&M Reserve Fund exceeds at any time the amount of \$2,500,000, Tenant may transfer such excess funds to its operating account.

(c) In the event Tenant fails to pay all its required impositions, operating expenses, and maintenance and capital improvement obligations, while meeting its programs goals in accordance with Section 3.4 above, Tenant shall be required to pay such sums as are required from its O&M Reserve Fund to cover such shortfalls. Failure to pay for such obligations or to maintain the O&M Reserve Fund or to provide Landlord with complete and accurate information on the O&M Reserve Fund as required in this Lease shall be considered a material breach of this Lease.

(d) Tenant shall, and does hereby, grant to Landlord a first lien security interest in the \$2,500,000 balance of the O&M Reserve Fund to secure Tenant's obligations to pay for the operation and maintenance of the Premises in accordance with the terms of this Lease, and agrees to execute such documents as Landlord deems necessary or appropriate to create, evidence and/or perfect the first lien security interest. In the event of a Default, Landlord may foreclose its security interest in the manner prescribed by law, and use such funds from the O&M Reserve Fund as are necessary to perform or reimburse Landlord for the payment of the operational expense or capital improvements required under the Lease.

#### Section 5.7 Reserves for Capital Improvements.

(a) Commencing with the fourth Lease Year and continuing every five Lease Years thereafter throughout the Term, Tenant shall provide Landlord with a report, for Landlord's review and approval, setting out all capital improvements planned for the Premises for the upcoming five-year period.

(b) Tenant shall at all times maintain adequate reserves for capital improvements to the Premises, fully funded for each current Lease Year in accordance with the report described in subsection (a) of this Section 5.7. Subject to the transfer provisions herein, Tenant shall maintain deposits in a segregated, interest-bearing account (the "Capital Reserves Account") at a bank or other financial institution approved by Landlord sufficient to fund all improvements and renovations identified in the capital improvement plan described in Section 5.7(a) for each current Lease Year. The Capital Reserves Account must remain with the Premises. That is, in the event Tenant assigns its interest in this Lease (other than in connection with Tenant's Financing) in a transaction to which Landlord has consented, then the Capital Reserves Account must also be transferred to the permitted assignee.

**ARTICLE 6**  
**USE, MAINTENANCE AND REPAIRS**

Section 6.1 Use and Management.

(a) Subject to the terms and provisions hereof, including Tenant's right to assign and/or sublet all or portions of the Premises in accordance with Article 10 and to Force Majeure, the Premises must be used solely for the construction by Tenant and continuous operation throughout the Term of a state-of-the-art multi-venue performing arts center meeting the specifications set out in Exhibit C and Section 5.2 that will host the broad spectrum of Austin's performing arts organizations and provide access to Austin's small and minority-based arts organizations at below market rates (the "Use Covenant") in accordance with use and access policies adopted by Tenant's Board of Trustees (the "Board") from time to time by a vote of not less than 60% of all voting members of the Board.

(b) Tenant shall have the right to name the Premises in accordance with City of Austin the Ordinance No. 981210-W (attached hereto as Exhibit B-1).

(c) Tenant shall operate the Premises in compliance with applicable laws.

(d) Tenant shall not permit any objectionable noises or odors to emanate from the Premises; nor take any other action that would constitute a nuisance or would endanger other users of the adjacent property; nor permit any unlawful or immoral practice to be carried on or committed on the Premises.

(e) Tenant shall procure at its sole expense (or cause its Subtenants to obtain) any permits and licenses required for the transaction of business in the Premises (including a liquor license for the sale and consumption of alcoholic beverages on the Premises) and otherwise comply with all applicable laws, ordinances and governmental regulations. At Landlord's written request, Tenant shall deliver to Landlord copies of all such permits and licenses.

(f) Tenant shall not use or occupy the Premises, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner that would in any way make void or voidable any insurance then in force with respect thereto, that would make it impossible to obtain the insurance required to be furnished by Tenant or Landlord hereunder, that would constitute a public or private nuisance, or that would violate any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances, or requirements of any Governmental Authority having jurisdiction.

(g) The Premises must be managed by the Board, consisting of members appointed by Tenant and, to the extent provided in the following sentence, the Austin City Council. The Austin City Council is entitled to appoint not less than eight members to the Board nor more than 25% of the total voting members of the Board. Landlord acknowledges that appointments to the Board by the Austin City Council must meet all reasonable minimum qualifications for membership on the Board as designated in Tenant's Bylaws. All Board members, including City Council appointees, are expected to be annual donors to Tenant. The Board may approve donations of services or other types of payment in lieu of monetary donations. Appointments to the Board that the Austin City Council is entitled to make shall be promptly made by the Austin City Council upon occurrence of vacancy.

## Section 6.2 Maintenance and Repairs.

(a) Subject to Tenant's rights under Section 5.5, and subject to normal wear and tear that is timely repaired, maintained and replaced, Tenant shall take good care of the Premises, make all repairs thereto and replacements thereof, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the sidewalks, parking areas and curbs within the Premises in good order, repair, and condition at all times. Specifically included in the foregoing, is the obligation for Tenant to maintain, repair, and replace, as needed, the mechanical, electrical, and plumbing systems of the Premises, and all components thereof, in order to keep same in good condition and repair at all times during the Term. In addition, commencing with the second Lease Year and continuing each Lease Year thereafter during the Term, Tenant shall submit to Landlord for its review and approval a maintenance plan for the Premises to be implemented by Tenant during the upcoming Lease Year. Throughout the Term, Tenant shall provide Landlord with such additional information or reports as Landlord deems necessary to determine the state of repair of the Premises. Following reasonable advance notice to Tenant, Landlord, its agents, representatives, or employees, may enter the Premises at the times specified in the notice to inspect the Premises for the purpose of determining Tenant's compliance with its maintenance and repair obligations under this Lease.

(b) Subject to normal wear and tear that is timely repaired, maintained and replaced, Tenant will not do, permit, or suffer any waste, damages, disfigurement, or injury to or upon the Premises or any part thereof, but this Section 6.2(b) shall not be construed as limiting Tenant's rights under Section 5.5.

(c) Landlord shall have the right to access and use the Premises at any time during the Term for the purpose of making repairs or improvements to any public utility facilities located on the Premises and for removing any public utility facilities located on the Premises that are not needed or used by Tenant in connection with its operation of the Premises. Except in the event of an emergency, Landlord agrees that, during the Term, it will give Tenant reasonable notice prior to undertaking any action in connection with a repair, improvement or removal of public utility facilities on the Premises, endeavor to disrupt Tenant's operations at the Premises as little as reasonably possible, and restore any areas disturbed by Landlord's access to the Premises to the condition existing prior to Landlord's activities. Landlord shall have no obligation to maintain, repair or replace any portion of the Premises except as expressly provided in this Section 6.2(c).

## **ARTICLE 7** **INSURANCE AND INDEMNITY**

### Section 7.1 Insurance.

(a) During the Term, Landlord will cause the Premises to be insured against all risk of physical loss, at its own cost and expense, on such terms as Landlord may deem reasonable, but in no event less than 100% of the replacement value of the Premises, and so long as Tenant and all Subtenants are in compliance with the following:



(1) Tenant and its Subtenants follow all loss control recommendations made by Landlord's insurance carrier;

(2) Tenant requires all Subtenants to maintain insurance meeting requirements approved by Landlord; and

(3) Neither Tenant nor any of its Subtenants conducts its operations on the Premises in a manner that causes Landlord's insurance carrier to reduce or discontinue coverage or increase insurance premiums.

Notwithstanding the foregoing, Tenant shall be responsible for the payment of up to \$100,000 of any deductible payable under such property insurance policy. If Tenant or any Subtenant fails to comply with the above-referenced requirements, resulting in increased premiums or liability to Landlord, then Tenant shall be responsible for paying the increase in premiums over the amount that Landlord would have otherwise had to pay. Furthermore, if the failure is not remedied within 30 days after notice thereof to Tenant, then Landlord shall maintain the above described insurance coverage until such time as Tenant does so at Tenant's expense. Tenant will reimburse Landlord for such insurance premiums no later than 30 days after notification by Landlord of the cost. The insurance maintained by Landlord under this Section 7.1(a) shall be carried in the name of both Landlord and Tenant and shall show the General Contractor as an additional insured (as its interests may appear). Landlord shall furnish Tenant with a certificate of the insurance carrier certifying that such insurance shall not be canceled without at least 30 days advance written notice to Tenant. Landlord will make available, upon Tenant's request, a copy of the property insurance policy for Tenant's review.

Landlord's obligation to maintain insurance pursuant to this Section 7.1 is contingent upon the Austin City Council appropriating sufficient funds each fiscal year during the Term for Landlord to meet such obligation. In the event the Austin City Council fails to appropriate and approve sufficient funds in any fiscal year to meet such obligation, or if Landlord determines any such coverage is no longer available or affordable, then Landlord will notify Tenant, and Landlord and Tenant will immediately renegotiate that portion of this Lease to achieve terms in respect thereof that are mutually satisfactory. If Landlord and Tenant are unable to do so within a reasonable period of time, Tenant shall have the right to terminate this Lease upon 30 days prior written notice to Landlord.

(b) Tenant shall maintain during the Term insurance that meets or exceeds the following requirements:

(1) primary coverage, in case of loss, in the amount of the deductible on Landlord's property insurance policy, as the same may change from time to time, with Landlord named as loss payee;

(2) contents coverage in a commercially reasonable amount;

(3) commercial general liability insurance in the amount of \$1,000,000, showing Landlord as an additional insured;

(4) Worker's compensation insurance as to Tenant's employees involved in the construction, operation, or maintenance of the Premises; and

(5) Such other insurance against other insurable hazards that at the time are commonly insured against in the case of improvements similarly situated, due regard being given to the height and type of the Improvements, their construction, location, use, and occupancy.

Tenant shall comply with all requirements set forth in Exhibit E, which is incorporated herein for all purposes.

(c) During the construction of the Additional Improvements, or any subsequent construction or repair of Improvements on the Premises, Tenant shall require the General Contractor to maintain builder's risk insurance in the amount of the contract, commercial general liability insurance, employer's liability and worker's compensation insurance and automobile liability insurance in amounts required by Landlord as shown in Exhibit E, with Landlord and Tenant as additional insureds and payment and performance bonds in form approved by Landlord and in the amount of the construction contract, with Landlord and Tenant named as co-obligees.

Section 7.2 Policies All insurance maintained by Tenant in accordance with the provisions of this Article 7 must be issued by companies reasonably satisfactory to Landlord. All property insurance policies maintained by Landlord, and the primary coverage maintained by Tenant, shall expressly provide that any loss thereunder may be adjusted with Tenant and Landlord, and must be payable jointly to Landlord and Tenant. If Landlord receives any such proceeds as the result of a Casualty (as hereinafter defined), it shall receive and disburse them as set forth in Section 8.1. All liability insurance policies carried by Tenant must name Landlord as an additional insured and shall include blanket contractual liability and a 30-day notice of cancellation endorsement. Tenant shall furnish Landlord upon request with duplicate originals or copies certified as being true and correct of all insurance policies required under this Article 7.

Section 7.3 Tenant's Indemnity TENANT SHALL INDEMNIFY AND HOLD HARMLESS LANDLORD, ITS OFFICERS AND EMPLOYEES, AND REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES"), FROM ALL LIABILITY, LOSS, CLAIMS, SUITS, ACTIONS, AND PROCEEDINGS WHATSOEVER ("CLAIMS") THAT MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF OR GROWING OUT OF ANY AND ALL INJURIES OR DAMAGES, INCLUDING DEATH, TO PERSONS OR PROPERTY RELATING TO THE USE OR OCCUPANCY OF THE PREMISES DURING THE TERM (INCLUDING, BUT NOT LIMITED TO, BREACH BY TENANT OF ANY OF ITS COVENANTS OR REPRESENTATIONS HEREIN REGARDING RELEASE OF HAZARDOUS SUBSTANCES OR COMPLIANCE WITH LAWS APPLICABLE THERETO) AND INCLUDING CLAIMS THAT ARISE OUT OF OR RESULT FROM THE ACTIVE OR PASSIVE NEGLIGENCE, OR SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES (BUT EXCLUDING, HOWEVER, THOSE CAUSED SOLELY BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD) AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR ALLEGED AGAINST SUCH INDEMNIFIED PARTIES, AND ALL LOSSES, LIABILITIES, JUDGMENTS, SETTLEMENTS, COSTS, PENALTIES, DAMAGES, AND EXPENSES RELATING THERETO, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND OTHER ACTUAL OUT OF POCKET COSTS OF DEFENDING AGAINST, INVESTIGATING, AND

**SETTLING THE CLAIMS.** Tenant shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against any of the Indemnified Parties. Maintenance of the insurance referred to in this Article 7 does not affect Tenant's obligations under this Section 7.3. Tenant shall be relieved of its obligation of indemnity to the extent of the amount actually recovered from one or more of the insurance carriers of Tenant or Landlord and either (a) paid to Landlord or (b) paid for Landlord's benefit in reduction of any liability, penalty, damage, expense, or charge actually imposed upon, or incurred by, Landlord in connection with the Claims. Tenant may contest the validity of any Claims, in the name of Landlord or Tenant, as Tenant may in good faith deem appropriate, provided that the expenses thereof are paid by Tenant, or Tenant shall cause the same to be paid by its insurer, and provided further Tenant maintains adequate insurance to cover any loss(es) that might be incurred if such contest is ultimately unsuccessful.

**Section 7.4 Subrogation** Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, employees, and contractors (including the General Contractor) for any injury, death, loss, or damage that may occur to persons or the Improvements, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause that is insured against under the terms of the policies of casualty insurance or worker's compensation insurance that Tenant and Landlord are required to provide hereunder, or under any policies of insurance maintained by Landlord, to the extent, and only to the extent, of any proceeds actually received by or for the account of Landlord or Tenant, respectively, with respect thereto, regardless of cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer shall hold any right of subrogation against the other.

**Section 7.5 Coverage** All insurance described in this Article 7 may be obtained by Tenant or Landlord respectively by endorsement or equivalent means under any blanket insurance policies maintained by Tenant or Landlord respectively, provided that the coverage and other terms of such insurance otherwise comply with this Article 7.

## **ARTICLE 8**

### **CASUALTY LOSS**

**Section 8.1 Tenant's Obligation to Restore** Should any Improvements be wholly or partially destroyed or damaged by fire or any casualty during the Term after completion of construction of the Additional Improvements (each, a "Casualty"), then Tenant shall, subject to the provisions of Section 8.3, promptly repair, replace, restore, and reconstruct the same as nearly as possible to their condition existing immediately prior to the Casualty (or to such other design as Landlord and Tenant may agree upon), and, provided that no Default by Tenant then remains uncured beyond any applicable cure period provided herein, Landlord shall make all insurance proceeds paid as a result of such Casualty available to Tenant for this purpose; provided, however, that Tenant's obligation in this regard shall be limited to the amount of insurance proceeds received by Tenant from Landlord and from any insurance on the Improvements carried by Tenant. For any Casualty occurring during the construction of Improvements, Tenant shall be liable for restoration or repair to the extent such loss is normally covered by builder's risk insurance or general liability insurance. After completion of such

repairs, restoration, or rebuilding, any insurance proceeds from policies carried by Landlord in excess of the cost of such repairs, restoration, or rebuilding shall be retained by Landlord.

Section 8.2 Notice of Damage Tenant shall immediately notify Landlord and each Qualified Mortgagee (as hereinafter defined) and each Credit Provider (as hereinafter defined) of any destruction or damage to the Premises.

Section 8.3 Election Not to Rebuild If a Casualty damages the Improvements at any time during Lease Years 41-50 or during the last five (5) Lease Years of any renewal terms, if applicable, and Tenant estimates that the damages to the Improvements exceeds in excess of 75% of the replacement cost thereof (excluding foundations and footings), then either Landlord or Tenant may elect by notice to the other party within 60 days after the Casualty that the Premises are not to be rebuilt by Tenant, but that, instead, this Lease is to be terminated as of the date of such Casualty. Upon an election to terminate by either Landlord or Tenant hereunder, and after payment to Landlord of all amounts then owing hereunder (including, but not limited to, the insurance proceeds or cash in lieu thereof), this Lease will terminate and neither Landlord nor Tenant will have any rights or obligations hereunder; provided, however, that all indemnifications and agreements relating to subrogation hereunder shall continue in full force and effect as to events and occurrences prior to such termination, and Tenant shall remain liable for the payment of ad valorem taxes on the Premises until the date of termination.

Section 8.4 Lease Controlling To the extent that any of the provisions of this Lease are inconsistent with the provisions of any Qualified Mortgage, or other leasehold mortgage, then the provisions of this Lease shall control.

## **ARTICLE 9**

### **CONDEMNATION**

#### **Section 9.1 Total Taking.**

(a) Should the entire Premises be taken (which term, as used in this Article 9, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar right, then Tenant's right of possession under this Lease shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows:

(1) first, to the payment of all reasonable fees and expenses incurred by Landlord and Tenant in collecting the award; and

(2) next, to Landlord and Tenant for their fee and leasehold interests, respectively.

(b) Landlord and Tenant shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals, therein. Each party shall be responsible for paying its own fees and expenses from its own award.

(c) After the distribution of the condemnation award as herein provided, this Lease shall terminate, except that all indemnifications hereunder shall continue in full force and effect as to

events and occurrences prior to such termination, and Tenant shall remain liable for the payment of any ad valorem taxes on the Premises until the date of termination.

**Section 9.2 Partial Taking** Should a portion of the Premises be taken by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall nevertheless continue in effect as to the remainder of the Premises unless, in Tenant's reasonable judgment, so much of the Premises shall be so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 9.1.

**Section 9.3 Award on Partial Taking** In the event of a partial taking where this Lease is not terminated, and as a result thereof Tenant will need to restore, repair, or refurbish the remainder of the Premises in order to put them in a useable condition, then (a) the award shall first be apportioned as provided in Section 9.1, with respect to the portion of the Premises taken, (b) the portion allocable to Landlord shall be paid to Landlord, and (c) the portion of the award payable to Tenant shall be deposited with the Qualified Mortgagee having first lien priority (or if there be none, to Tenant) and disbursed for payment of such restoration, repair and refurbishment work. If a portion of the Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 9.1 with respect to the portion of the Premises taken. If a portion of the Premises is taken and repairs or restorations are required and the reasonable cost of such repairs and renovations exceeds the amounts covered by clause (c) above, then Landlord will make proceeds paid to it under this Section 9.3 (net of fees and expenses) available to Tenant to pay the excess cost of such repairs and renovations on terms and conditions reasonably acceptable to Landlord.

**Section 9.4 Temporary Taking** If the whole or any portion of the Premises shall be taken for temporary use or occupancy, the Term shall not be reduced or affected and Tenant shall continue to pay the Rent in full. Except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease, including the Use Covenant. In the event of any temporary taking, Tenant shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to Landlord therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between Landlord and Tenant as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period. If the portion of the award payable to Tenant is made in a lump sum or is payable to Tenant other than in equal monthly installments, Landlord may collect such portion thereof as shall be sufficient to meet (a) the payments due to Landlord from Tenant under the terms of this Lease during the period of such temporary use or occupancy (and the amounts so collected shall be credited to Tenant's obligations hereunder), and (b) the estimated cost of restoration of the Premises, if such taking is for a period not extending beyond the expiration of the Term, which amount shall be made available to Tenant when and if, during the Term, Tenant shall obtain possession and shall proceed to restore the Premises as nearly as may be reasonably possible to the condition existing immediately prior to such taking. Following such restoration,

Tenant shall be entitled to receive all amounts previously retained by Landlord under this Section 9.4.

Section 9.5 Mortgagee's Rights Any Qualified Mortgagee shall, if it so desires, be made a party to any condemnation proceeding.

Section 9.6 Notice of Taking; Cooperation Tenant and Landlord shall immediately notify the other, and Tenant shall immediately notify each Qualified Mortgagee and Credit Provider, of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

## **ARTICLE 10**

### **ASSIGNMENT AND SUBLETTING**

Section 10.1 Tenant's Right to Assign Subject to Tenant's rights under Section 11.1 and except for an assignment to an affiliate of Tenant (which is expressly permitted), Tenant may assign its leasehold interest in the Premises or any part thereof only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignee of Tenant's leasehold interest in the Premises is bound by the terms hereof, including the Use Covenant.

Section 10.2 Tenant's Right to Sublease.

(a) Tenant may, without Landlord's consent, sublease portions of the Premises or contract with providers for catering (including sale of alcoholic beverages), concession sales, ticket sales and other retail operations incidental to, and supporting, the operation of a performing arts center at the Premises; provided, however, that all Subleases must be in writing and on commercially reasonable terms. Landlord will have the right to approve the form of any Sublease. Tenant will require its Subtenants to follow all loss control recommendations made by Landlord's insurance carrier and to maintain insurance meeting requirements approved by Landlord, and Tenant will prohibit Subtenants or contractors from conducting their operations on the Premises in a manner that causes Landlord's insurance carrier to reduce or discontinue coverage or increase insurance premiums. Tenant shall comply with the City of Austin's MBE/WBE program requirements for all Subleases involving concession sales. Except as expressly provided in Section 10.2(b), Tenant may sublease all or any portion of the Premises, or enter into one or more Subleases, for uses other than those described in the first sentence of this Section 10.2(a) only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord is not obligated to consent to a subletting to a third party provider of services unrelated to the Use Covenant. All Subleases entered into in violation of these provisions will be void, unless expressly ratified in writing by Landlord.

(b) Tenant may, without Landlord's consent, sublet a portion of the Premises for a radio broadcast facility consistent with the intent set forth in Exhibit D hereto; provided that the space leased does not exceed in the aggregate 12,000 square feet and Tenant demonstrates to the reasonable satisfaction of Landlord that (i) such space is not displacing or otherwise negatively

impacting the primary use of the Premises as set forth in Section 6.1, (ii) such use is legally permissible within the Premises, and (iii) such sublease does not preclude the development of additional theater spaces as described in Exhibit C hereto.

(c) Each Sublease for space in the Premises must specifically provide that the Subtenant's rights thereunder are subject to Landlord's rights under this Lease and must provide that, upon a termination of this Lease or of Tenant's right to possession of the Premises, such Sublease does not continue in effect as a lease directly between Landlord and the Subtenant thereunder, unless (i) Landlord elects to continue such Sublease by written notice to the Subtenant, (ii) the Subtenant attorns to Landlord, (iii) Landlord is not responsible for the return or repayment of any security or other deposits made by such Subtenant with Tenant unless Tenant has turned the same over to Landlord, and (iv) Landlord shall not be liable or responsible for the cure or remedy of any breach, violation, or default on the part of Tenant under any Sublease occurring prior to termination of this Lease or of Tenant's right to possession of the Premises. Tenant shall give a copy of each Sublease to Landlord upon written request therefor by Landlord from time to time. In addition, Tenant shall deliver to Landlord within 30 days following the end of each Lease Year a rent roll and a profit and loss statement for Tenant's operations at the Premises for such Lease Year.

(d) As used in this Lease, the term "Sublease" includes any leases, licenses, occupancy agreements, franchise or other similar rights, agreements, or arrangements of whatever nature relating to the use or occupancy of any part of the Premises other than by Tenant. As used in this Lease, the term "Subtenant" includes all persons and entities occupying space at or in the Premises pursuant to a Sublease.

(e) Any assignment or sublease made in violation of the provisions of this Article 10 is void and of no effect unless ratified by Landlord in writing.

## **ARTICLE 11**

### **TENANT'S FINANCING**

Section 11.1 Tenant's Right to Encumber Except as provided in Article 5, and subject to the Subordination Confirmation (as hereinafter defined), Tenant may, at any time and from time to time, encumber its leasehold interest established by this Lease by a Qualified Mortgage (as hereinafter defined) without obtaining the consent of Landlord; provided, however: (a) Tenant has no right to grant, and no Qualified Mortgage shall constitute a lien or other encumbrance of any kind whatsoever on the fee title of Landlord to the Premises; (b) the Qualified Mortgage at all times is and remains inferior and subordinate to all the conditions, covenants, and obligations of this Lease and to all of the rights of Landlord under this Lease; (c) any purchaser of Tenant's leasehold interest in the Premises pursuant to a foreclosure of a Qualified Mortgage (including a Qualified Mortgagee or a Credit Provider) and any operator of the Premises retained by such a purchaser (any such operator being subject to the prior written approval of Landlord) is bound by all of the terms and provisions of this Lease, including, without limitation, the Use Covenant; and (d) the Qualified Mortgagee must deliver to Landlord a written confirmation (the "Subordination Confirmation") of items (a), (b) and (c) immediately above in this paragraph, which Subordination Confirmation must include the Qualified Mortgagee's name and address for notice purposes hereunder. References in this Lease to "Qualified Mortgagee" refer to a bona fide third party institutional lender (i) to whom Tenant has

encumbered its leasehold interest with a Qualified Mortgage and (ii) that has delivered a Subordination Confirmation to Landlord, and a "Qualified Mortgage" is the mortgage, deed of trust or other security instrument covering Tenant's leasehold estate herein that is (a) granted to secure a Qualified Mortgagee's Loan to Tenant for the sole purpose of either: (aa) financing the cost of constructing the Additional Improvements or (bb) refinancing a loan described in clause (aa) above; provided, that any such refinancing loan may not be for a principal amount in excess of the outstanding balance of the refinanced loan on the date of the refinancing or extend the maturity of the refinanced loan beyond the original stated maturity date thereof and (b) the subject of the Qualified Mortgagee's Subordination Confirmation. As to any Qualified Mortgage in favor of a Qualified Mortgagee, Landlord consents to provisions therein to which Tenant may agree (a) for an assignment of Tenant's share of the net proceeds from any award or other compensation resulting from a total or partial (other than temporary) taking as set forth in Article 9, (b) for the entry of any Qualified Mortgagee upon the Premises during business hours, without notice to Landlord or Tenant, to view the state of the Premises, (c) that a Default constitutes a default under any such Qualified Mortgage, (d) for an assignment of Tenant's right, if any, to terminate, cancel, modify, change, supplement, alter or amend this Lease, and (e) effective upon any default in any such Qualified Mortgage, (i) for the foreclosure of the Qualified Mortgage pursuant to a power of sale by any lawful means and the subsequent sale of the leasehold estate to the purchaser at the foreclosure sale and a sale by such purchaser or a sale by any subsequent purchaser, (ii) for the appointment of a receiver, irrespective of whether any Qualified Mortgagee accelerates the maturity of all indebtedness secured by the Qualified Mortgage, (iii) for the rights of the Qualified Mortgagee or the receiver to enter and take possession of the Premises to manage and operate the same, to collect the subrentals, issues and profits therefrom (subject to the rights of Landlord hereunder), and to cure any default under the Qualified Mortgage or any Default, and (iv) for an assignment of Tenant's rights, title and interest in and to the premiums for or dividends upon any insurance required by the terms of this Lease, as well as in all refunds or rebates of taxes or assessments upon or other charges against the Premises, whether paid or to be paid.

Section 11.2 Qualified Mortgagee/Credit Provider Protective Provisions Landlord agrees that, as between Landlord and any Qualified Mortgagee only, Landlord will not exercise any of its remedies occasioned by an uncured Default hereunder unless and until Landlord has mailed to such Qualified Mortgagee at the address specified in the Subordination Confirmation duplicate copies of all written notices that Landlord gives or serves on Tenant under Article 15 with respect to such Default and the Qualified Mortgagee has had a reasonable period of time thereafter (but not less than 30 days) to cure any such Default. Landlord acknowledges that Tenant may become indebted to, or obligated to reimburse, a credit provider or credit providers in connection with Tenant's Financing (each, a "Credit Provider"). Upon being furnished by Tenant or a Credit Provider the Credit Provider's name and address for notice purposes hereunder, Landlord will also not exercise any of its remedies occasioned by an uncured Default hereunder unless and until Landlord has mailed to such Credit Provider at the address provided duplicate copies of all written notices that Landlord gives or serves on Tenant under Article 15 with respect to such Default and the Credit Provider has had a reasonable period of time thereafter (but not less than 30 days) to cure any such Default.

Section 11.3 Right of Qualified Mortgagee/Credit Provider to Prevent Lease Termination Each Qualified Mortgagee and each Credit Provider may do any act or thing required of Tenant to prevent a termination of this Lease, and all such acts or things done and



performed by such Qualified Mortgagee or Credit Provider shall be as effective to prevent a termination of Tenant's rights under this Lease as if done by Tenant.

**Section 11.4 Modifications** Landlord is not obligated to agree to any modifications of this Lease in connection with the granting of a Qualified Mortgage.

**Section 11.5 Liability of Qualified Mortgagee** No Qualified Mortgagee shall be or become liable to Landlord as an assignee of this Lease or otherwise (unless a New Lease (as hereinafter defined) has been executed pursuant to Section 11.6) until it expressly assumes by written instrument such liability, and no assumption shall be inferred or result from foreclosure or other appropriate proceedings in the nature thereof, or as the result of any other action or remedy provided for by any Qualified Mortgage, or from a conveyance or assignment from Tenant pursuant to which the purchaser at foreclosure acquires the rights and interests of Tenant under the terms of this Lease; provided, however, that any such assignee of purchaser must timely and diligently perform all obligations of Tenant hereunder.

**Section 11.6 New Lease with Qualified Mortgagee Upon Termination** If this Lease is terminated by reason of the occurrence of an uncured Default, and if Landlord obtains possession of the Premises thereafter, Landlord agrees that any Qualified Mortgagee has the right, for a period of 30 days subsequent to such termination of this Lease, to elect to demand a new lease of the Premises ("New Lease") of the character and, when executed and delivered and possession of the Premises are taken thereunder, having the effect herein set forth. The New Lease must be for a term to commence at the termination of this Lease and have as the date for the expiration thereof the same date stated in this Lease as the date for the expiration thereof. The rent under the New Lease must be the same as would have been applicable during such term under the provisions of this Lease had this Lease not so expired or terminated, and all the rents, covenants, conditions and provisions of the New Lease shall be the same as the terms, conditions and provisions of this Lease, including the Use Covenant. If any such Qualified Mortgagee elects to demand the New Lease within such 30-day period, such Qualified Mortgagee must give written notice to Landlord of such election; and thereupon, within 30 days thereafter, Landlord and such Qualified Mortgagee shall execute and deliver the New Lease upon the terms above set forth, and such Qualified Mortgagee shall, at the time of the execution and delivery of the New Lease, pay to Landlord all Rent that would have become payable hereunder by Tenant to Landlord to the date of the execution and delivery of the New Lease had this Lease not terminated and which remain unpaid at the time of the execution and delivery of the New Lease, together with reasonable attorneys' fees and expenses in connection therewith. The New Lease may, at the option of the Qualified Mortgagee, be executed by a nominee of the Qualified Mortgagee, without the Qualified Mortgagee assuming the burdens and obligations of Tenant thereunder beyond the period of its ownership of the leasehold estate created thereby. The Qualified Mortgagee's right to enter into the New Lease shall be conditioned upon such Qualified Mortgagee's curing any and all Defaults as of the date this Lease is terminated and that are reasonably susceptible of being cured by such Qualified Mortgagee or its nominee.

**Section 11.7 Foreclosure by Qualified Mortgagee** Anything in this Lease to the contrary notwithstanding, Landlord shall not be entitled to exercise any right to terminate this Lease during the period that any Qualified Mortgagee requires to foreclose its Qualified Mortgage or otherwise to fulfill or complete its remedies under such Qualified Mortgage or to cure any default under the Qualified Mortgage, provided, however, that such period must in no

event exceed 30 days, and that within such period of time: (a) such Qualified Mortgagee proceeds promptly and with due diligence with its remedies under its Qualified Mortgage on the leasehold estate and thereafter prosecutes the same with all due diligence; and (b) there is timely paid to Landlord the Rent that have, or may become, due and payable during such period of time and as the same become due and payable, and all other terms and provisions of this Lease (that are reasonably susceptible of being duly complied with by the Qualified Mortgagee or its nominee), including the Use Covenant, are duly complied with.

Section 11.8 No Voluntary Surrender of Leasehold Estate without Consent of Qualified Mortgagee So long as there exists any unpaid or undischarged Qualified Mortgage on the estate of Tenant created hereby, Landlord expressly agrees for the benefit of such Qualified Mortgagee that it will not accept a voluntary surrender of the Premises or a voluntary cancellation of this Lease from Tenant prior to the termination of this Lease without the written consent of the Qualified Mortgagee, which consent must not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 12**

### **LANDLORD'S FINANCING**

Landlord may, from time to time and at any time, without the consent or joinder of Tenant or any of Tenant's lenders, encumber its interest in the Premises with one or more deeds of trust, mortgages, or other lien instruments. Any lien of Landlord upon its interest in the Premises shall be subject and subordinate to the interest of Tenant hereunder and to any Qualified Mortgage then in effect.

## **ARTICLE 13**

### **WARRANTY OF PEACEFUL POSSESSION**

Landlord covenants that Tenant, on paying the Rent and performing and observing the covenants and agreements herein contained and provided to be performed by Tenant, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations.

## **ARTICLE 14**

### **[Intentionally omitted]**

## **ARTICLE 15**

### **DEFAULT AND REMEDIES**

Section 15.1 Default Each of the following shall be deemed a "Default" by Tenant hereunder (periods of grace or notice and cure are contained in Section 15.2 below):

(a) Whenever Tenant fails to pay any installment of Rent or any other sum payable by Tenant to Landlord on the date upon which the same is due to be paid;

(b) Whenever Tenant fails to keep, perform, or observe any of the covenants (including the Use Covenant), agreements, terms, or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of Rent or other liquidated sums of money, including, but not limited to, failure to commence construction of the Additional

Improvements on or before the Construction Commencement Date or failure to establish and maintain the required O&M Reserve Fund:

(c) Whenever an involuntary petition is filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or whenever a receiver of Tenant, or of all or substantially all of the property of Tenant, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within 120 days after the happening of such event;

(d) Whenever Tenant makes an assignment of its interest in the Premises for the benefit of creditors, files a voluntary petition under any bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors;

(e) Except for permitted assignments hereof (including a Qualified Mortgage), the assignment, or legally binding agreement to assign, or exchange, or legally binding agreement to exchange, Tenant's interest in this Lease, or any part thereof, without Landlord's prior written consent; or

(f) Tenant abandons all or any substantial portion of the Premises.

**Section 15.2 Remedies** If (a) a Default occurs under Section 15.1(a), and such Default continues for ten days after Tenant has been given a written notice specifying such Default, **OR** (b) a Default occurs under Section 15.1(b), and Tenant fails to commence and take such steps as are necessary to remedy the same within 30 days after Tenant has been given a written notice specifying the same, or having so commenced, thereafter fails to proceed diligently and with continuity to remedy the same within 180 days after such notice, **OR** (c) should any other Default occur, **THEN**, after providing all required notices, if any, to all Qualified Mortgagees and Credit Providers as provided in Article 11 and subject in all respects to the provisions of this Lease relating to the rights of Qualified Mortgagees and Credit Providers, Landlord may at any time thereafter prior to the curing thereof and without waiving any other rights hereunder or available to Landlord at law or in equity (Landlord's rights being cumulative), do any one or more of the following:

(1) Landlord may terminate this Lease by giving Tenant written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Tenant and all parties claiming by, through, or under Tenant automatically terminates upon the date of such notice with the same force and effect and to the same extent as if the date of such notice were the day originally fixed in Article 2 for the expiration of the Term; and Landlord, its agents or representatives, may, without further demand or notice, reenter and take possession of the Premises and remove all persons and Property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. In the event of such termination, Tenant shall be liable to Landlord for damages in an amount equal to (i) all obligations of Tenant under this Lease that remain unpaid at the time of termination including, but not limited to, maintenance and operational costs in connection with the Premises and (ii) all actual out of pocket third party expenses incurred by Landlord enforcing its rights hereunder.

(2) Landlord may terminate Tenant's right to possession of the Premises and enjoyment of the rents, issues, and profits therefrom without terminating this Lease or the leasehold estate created hereby, reenter and take possession of the Premises and remove all persons and personal property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof, and lease, manage, and operate the Premises and collect the rents, issues, and profits therefrom all for the account of Tenant, and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable actual out of pocket third party costs and expenses of repossessing, leasing, managing, and operating the Premises). If the net rental so received by Landlord exceeds the amounts necessary to satisfy all of Tenant's obligations under this Lease, Landlord shall retain such excess. If Landlord elects to proceed under this Section 15.2(2), it may at any time thereafter elect to terminate this Lease as provided in Section 15.2(1).

(3) Landlord may enter the Premises and perform any obligation of Tenant under this Lease, in which event Tenant shall reimburse Landlord for such cost and expenses within 30 days after Landlord notifies Tenant of same.

(4) Landlord may exercise its rights under any other provision of this Lease.

#### **ARTICLE 16**

#### **LANDLORD'S REPRESENTATIONS WARRANTIES AND COVENANTS**

Landlord represents and warrants to, and covenants with, Tenant as set forth in this Article 16.

**Section 16.1 Authorization, Execution, Delivery** The execution, delivery and performance of this Lease by Landlord have been duly authorized by all required actions. This Lease has been duly and validly executed and delivered by Landlord, and constitutes the valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, subject only to the discretion of courts in the granting of equitable remedies and to laws pertaining to creditors' rights generally.

**Section 16.2 No Further Consents; No Conflicts** No consent or approval of any third party, including, without limitation, any Governmental Authority, is required in connection with the execution, delivery or performance by Landlord of this Lease. The execution and delivery of this Lease by Landlord, and the performance of the obligations and consummation of the transactions contemplated herein do not and will not (a) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under (i) any bond, debenture, note or other evidence of indebtedness or (ii) any contract, indenture, mortgage, loan agreement, lease, joint venture or other agreement or instrument to which Landlord is a party or by which Landlord or any of its properties are bound, or (b) result in any violation by Landlord of any law, order, rule or regulation of any court or Governmental Authority.

**Section 16.3 No Pending Litigation** No litigation or governmental proceeding is pending or, to the knowledge of Landlord, threatened against or affecting Landlord that involves any of the transactions contemplated by this Lease.

**ARTICLE 17**  
**TENANT'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

Tenant represents and warrants to, and covenants with, Landlord as set forth in this Article 17.

Section 17.1 Existence, Etc. Tenant is a non-profit corporation duly formed and validly existing under the State of Texas with full power and authority to enter into and be bound by its obligations under this Lease.

Section 17.2 Authorization, Execution, Delivery The execution, delivery and performance of this Lease by the executing officer on behalf of Tenant have been duly authorized by Tenant through the Board, and an original Certificate of Board Resolution or Unanimous Written Consent of the Board of Trustees to such effect has been provided to Landlord on the execution of this Lease. This Lease has been duly and validly executed and delivered by the executing officer on behalf of Tenant, and constitutes the valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, subject only to the discretion of courts in the granting of equitable remedies and to laws pertaining to creditors' rights generally.

Section 17.3 No Further Consents; No Conflicts No consent or approval of any third party, including, without limitation, any Governmental Authority, is required in connection with the execution, delivery or performance by Tenant of this Lease. The execution and delivery of this Lease by Tenant, and the performance of the obligations and consummation of the transactions contemplated herein do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, (a) the organizational documents of Tenant, (b) any contract, indenture, mortgage, loan agreement, lease, joint venture or other agreement or instrument to which Tenant is a party or by which Tenant or any of its properties are bound, or result in any violation by it of any law, order, rule or regulation of any court or Governmental Authority. Tenant is not in material violation of any law, ordinance, governmental rule or regulation or court decree to which it may be subject, nor has it failed to obtain and maintain in full force and effect any license, permit, certificate, franchise or other governmental authorization necessary to the ownership of its property.

Section 17.4 No Pending Litigation No litigation or governmental proceeding is pending or, to the knowledge of Tenant, threatened against or affecting Tenant (a) that involves any of the transactions contemplated by this Lease, or (b) that, if adversely determined, would have a material adverse effect upon Tenant's financial condition, business or properties.

Section 17.5 No Defaults Tenant is not in default in any respect under any material order, writ, injunction, award or decree of any court, arbitrator, administrative agency or other Governmental Authority binding upon or affecting Tenant or by which any of its assets may be bound or affected, or under any agreement or other undertaking or instrument to which it is a party or by which it is bound (including, without limitation, this Lease), and nothing has occurred that would materially and adversely affect the ability of Tenant to carry on its business or perform its obligations under any such order, writ, injunction, award, decree, agreement or other undertaking or agreement.

Section 17.6 Taxes Tenant has filed all Federal and State tax returns that are required to be filed and has paid all taxes shown on said returns (including without limitation all federal, state and local income, franchise, sales, property, ad valorem payroll, unemployment and social security taxes, charges, assessments and penalties) and on all assessments received by Tenant to the extent such taxes have become due. Upon Landlord's written request therefor, Tenant shall provide Landlord with a copy of all such assessments and with satisfactory evidence that such taxes have been timely paid.

Section 17.7 Solvency Tenant is solvent and able to meet obligations as they mature, and no act has been taken or occurred that would allow any party to file any involuntary proceedings against Tenant or any of its subsidiaries under any provisions of the Federal Bankruptcy Code or any applicable state law, and Tenant does not have any outstanding liens, suits, garnishments, bankruptcy or court actions that could render it insolvent.

Section 17.8 Franchises, Licenses, Etc. Tenant has or will timely obtain and hold all franchises, licenses, governmental permits, leases, patents, trademarks, service marks, trade names, copyrights, and other authorizations necessary or desirable to conduct its business at the Premises as presently conducted and as proposed to be conducted, and each thereof is, or will be, in full force and effect and no event has occurred that constitutes or, after notice or lapse of time or both, would constitute, a default under any thereof.

Section 17.9 No Environmental Hazards Except for ordinary cleaning products used in substantial accordance with the manufacturer's labeled instructions in the ordinary course of Tenant's business and in substantial accordance with applicable state and federal laws governing such activities, Tenant will not store, transport or utilize any Hazardous Substances at the Premises.

## **ARTICLE 18**

### **MISCELLANEOUS**

Section 18.1 Notices Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 18.1; (b) delivering the same to the party to be notified; (c) sending a prepaid telex or telegram, so addressed; (d) confirmed facsimile; or (e) overnight courier of general use in the business community of Austin, Texas. Notice given in accordance herewith is deemed effective on the earlier of actual receipt or three calendar days next following deposit thereof in accordance with the requirements of clause (a) above. For purposes of notice, the addresses of the parties hereto, until changed, are as follows:

Landlord:

City of Austin  
P.O. Box 1088.  
Austin, Texas 78767  
Attn.: Director, Austin Convention  
Center Department  
Phone: (512) 404-4040  
Fax: (512) 404-4416

With a copy to:

City of Austin  
P. O. Box 1088  
Austin, Texas 78767  
Attn.: City Attorney, Law Department  
Fax.: (512) 499-2984

Tenant:

Greater Austin Performing Arts Center, Inc.  
501 W. 3rd Street  
Austin, Texas 78701  
Attn.: Chief Executive Officer  
Phone: (512) 482-0800  
Fax: (512) 482-0700

The parties hereto may from time to time change their respective addresses and/or fax numbers for purposes of notice hereunder by giving a notice to such effect in accordance with the provisions of this Section 18.1.

**Section 18.2 Performance of Other Party's Obligations** If either party hereto fails to perform or observe any of its covenants, agreements, or obligations hereunder for a period of 30 days after written notice of such failure is given by the other party, then the other party may, at its sole election (but not as its exclusive remedy), perform or observe the covenants, agreements, or obligations that are asserted to have not been performed or observed at the expense of the failing party and to recover all costs or expenses incurred in connection therewith, together with interest thereon from the date expended until repaid at a rate per annum equal to the Contract Rate. Notwithstanding the foregoing, if either party determines, in its reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to Premises exists due to the other party's failure to observe or perform its or his covenants, agreements, and obligations hereunder, then such party may immediately perform or observe the covenants, agreements and obligations that give rise to such emergency at the expense of the failing party. Any performance or observance by a party pursuant to this Section 18.2 shall not constitute a waiver of the other party's failure to perform or observe.

**Section 18.3 Modification and Non-Waiver** No variations, modifications, or changes herein or hereof are binding upon any party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent of each party. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Landlord of any Rent at any time or in any manner other than as herein provided, will be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof will be implied from any action of any party, and any such waiver, to be effective, must be set out in a written instrument signed by a duly authorized representative of the waiving party.

**Section 18.4 Governing Law** This Lease will be construed and enforced in accordance with the laws of the State of Texas.

Section 18.5 Number and Gender; Captions; References Pronouns, wherever used herein, and of whatever gender, include natural persons and corporations and associations of every kind and character, and the singular includes the plural wherever and as often as may be appropriate. Article and Section headings in this Lease are for convenience of reference and do not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular Section or provision, unless the context specifically indicates to the contrary any reference to a particular "Article" or "Section" will be construed as referring to the indicated Article or Section of this Lease. All of the Exhibits and Schedules referenced in and attached to this Lease are hereby incorporated into this Lease by this reference.

Section 18.6 Estoppel Certificate Landlord and Tenant shall execute and deliver to each other, promptly upon any request therefor by the other party, or by any Qualified Mortgagee or Credit Provider, a certificate addressed as indicated by the requesting party and stating:

- (a) whether this Lease is in full force and effect;
- (b) whether this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether any particular Article, Section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably requested.

Section 18.7 Severability If any provision of this Lease or the application thereof to any person or circumstance becomes, at any time or to any extent, invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby.

Section 18.8 Attorney Fees If litigation is ever instituted by either party hereto to enforce, or to seek damages for the breach of, any provision hereof, the prevailing party therein shall be promptly reimbursed by the other party for all attorneys' fees reasonably incurred by the prevailing party in connection with such litigation.

Section 18.9 Surrender of Premises; Holding Over Upon termination or the expiration of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Premises, in good order, repair, and condition, as provided in Section 6.2(a). Upon such termination or expiration Landlord may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by summary proceedings, ejectment, or otherwise, and may dispossess and remove Tenant from the Premises and may have, hold, and enjoy the Premises and all rental and other income therefrom, free of any claim by Tenant with respect thereto. If Tenant does not surrender



possession of the Premises at the end of the Term, such action does not extend the Term, Tenant becomes a tenant at sufferance on a month-to-month basis, and during such time of occupancy Tenant shall pay to Landlord, as damages, an amount equal to the then fair market rental value of the Premises. Landlord shall not be deemed to have accepted a surrender of the Premises by Tenant, or to have extended the Term, other than by Landlord's execution of a written agreement specifically so stating.

**Section 18.10 Relation of Parties** It is the intention of Landlord and Tenant to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make Landlord and Tenant partners or joint venturers or to render either party hereto liable for any obligation of the other.

**Section 18.11 Force Majeure** As used herein "Force Majeure" means the occurrence of any event (other than failure to obtain reasonable financing for, failure to refinance, or cessation of disbursements under existing financing for, the purchase, construction, demolition or repair of the Premises or the Additional Improvements or lawsuits between parties comprising Tenant) that prevents or delays the performance by Landlord or Tenant of any obligation imposed upon it hereunder (other than payment of Rent) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If Tenant shall be delayed, hindered, or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Tenant shall not otherwise be in Default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Tenant:

- (a) Tenant shall give prompt written notice of such occurrence to Landlord; and
- (b) Tenant shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep Landlord advised with respect thereto, and shall commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination.

Anything contained in or inferable from this Lease to the contrary notwithstanding, Tenant shall not be relieved by any event of Force Majeure from Tenant's obligations to pay Rent hereunder, nor is the Term extended thereby.

**Section 18.12 Non-Merger** Notwithstanding the fact that fee title to the Land and to the leasehold estate hereby created may, at any time, be held by the same party, there is no merger of the leasehold estate hereby created unless the owner thereof executes and files for record in the Office of the County Clerk of Travis County, Texas a document expressly providing for the merger of such estates.

**Section 18.13 Entire Agreement and Further Agreements**(a) This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein; provided, however, that no City of Austin ordinance or resolution with regard to this Lease is merged herein, it being acknowledged that any such ordinance or resolution continues in full force and effect, including, without limitation, the Town Lake Master Plan and the Parking Structure Access Policy Plan. The parties acknowledge and agree that, in addition to the Town Lake Master Plan and the Parking Structure Access Policy

Plan, the Parking Plan and the rules and regulations for the Service Yard to be established by Landlord pursuant to Section 1.5 will also affect Tenant's use of the Premises.

(b) In addition, the parties acknowledge and agree that other and further agreements may be necessary to effectuate the purposes of this Lease and, accordingly the parties agree to reasonably cooperate and use good faith efforts in reaching such further agreements. It is specifically noted that additional utility easements may be required over, under, upon and across the Premises, the Temporary Easement Area, the Access Area, the Service Yard, and/or the Parking Structure in connection with providing utility service infrastructure and in providing utility service to the Premises. Landlord agrees to include Tenant in the planning process for any such easements to be required by Landlord in order to avoid and/or minimize any interference with or taking of a portion of the Premises, specifically including any master planned additional venue within the Premises.

**Section 18.14 Liability of Tenant** Tenant shall have full personal liability for performance of all of its liabilities and obligations under this Lease.

**Section 18.15 Recordation** Landlord and Tenant will promptly execute an instrument in recordable form, constituting a short form of this Lease, that may be filed for record in the Office of the County Clerk of Travis County, Texas, by either party, which instrument shall disclose, among other things, the rights of Tenant to use the Temporary Easement Area and to seek renewal of this Lease in accordance with Sections 1.1(b) and 2.2, respectively.

**Section 18.16 Successors and Assigns** This Lease constitutes a real right and covenant running with the Premises and, subject to the provisions hereof pertaining to Tenant's rights to assign, sublet, or encumber, this Lease is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Whenever a reference is made herein to either party, such reference includes the party's successors and assigns.

**Section 18.17 Inspection** When no state of emergency exists, after notice to Tenant, Landlord may enter upon the Premises during normal operating hours in order to inspect same. During the pendency of any emergency, Landlord may enter upon the Premises at any time and without notice to Tenant. Landlord will use its good faith best efforts to minimize the disruption to Subtenants under Subleases resulting from any such inspections.

**Section 18.18 Landlord's Joinder** Landlord agrees to join with Tenant, at no cost to Landlord, in the execution of such applications for permits and licenses from any Governmental Authority as may be reasonably necessary or appropriate to effectuate the intents and purposes of this Lease, provided that no such application constitutes an encumbrance of or with respect to Landlord's fee estate in the Premises, and Landlord shall not incur or become liable for any obligation as a result thereof. Nothing in this Section 18.18 operates or may be construed to require Landlord to consent to or join in any actions that would have the effect of changing zoning categories, adopting special zoning categories or classifications, or otherwise changing the permissible uses of the Premises under applicable local law.

**Section 18.19 No Third Parties Benefited** Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, right to execute a new lease, and certain other enumerated rights granted to Qualified Mortgagees and/or Credit

Providers, the terms and provisions of this Lease are for the sole benefit of Landlord and Tenant, and no third party whatsoever, is intended to benefit herefrom.

Section 18.20 Survival Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease survive the end of the Term.

Section 18.21 Use of Landlord's Name Tenant shall not use Landlord's name in any advertising or promotional material relating to the Premises without Landlord's prior written consent, but Tenant may make reference to this Lease and to Landlord in legally operative documents, as Tenant shall deem reasonably necessary.

Section 18.22 No Commissions Landlord and Tenant represent and warrant to one another that there are no broker's, finder's or similar fees payable in connection with this lease transaction. Landlord shall be responsible to the exclusion of any responsibility of Tenant for any broker claiming any commission, broker's finder's or similar fees by, through or under Landlord and Tenant hereby agrees to indemnify and hold Landlord harmless from and against any and all claims for real estate commissions, broker's, finder's or similar fees in connection with this lease transaction when such claim is based on the actions or inactions of Tenant.

Section 18.23 Further Assurances Landlord and Tenant each agree to execute such further documents, and to take such further acts, as may be necessary or required to carry out the terms of this Lease.

Section 18.24 Authorized Representatives Landlord hereby designates its City Manager or his or her authorized designee to represent Landlord in all matters under this Lease, including the transmission of instructions and the receipt of information, except to the extent specifically otherwise provided herein. Tenant hereby designates its Chief Executive Officer or his or her authorized designee to represent Tenant in all matters under this Lease, including the transmission of instructions and the receipt of information, except to the extent specifically otherwise provided herein.

Section 18.25 Effect of Lease; Effective Date This Lease amends and restates in its entirety and replaces the Amended and Restated Lease Agreement and the effective date of this Lease ("Effective Date") relates back to the effective date of the Ground Lease Agreement.

EXECUTED as of the date and year first above written.

LANDLORD:

City of Austin  
a home rule city and municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

---

Assistant City Attorney

TENANT:

Greater Austin Performing Arts Center, Inc.,  
A Texas nonprofit corporation using the  
assumed name "The Long Center"

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_, Secretary

EXHIBIT A

Legal Description of Land

EXHIBIT A-1

Legal Description of Temporary Easement Area

See attached.

EXHIBIT A-2

Legal Description of Access Area

**[to be added after completion of Additional Improvements]**



EXHIBIT A-3

Legal Description of Service Yard

See attached.

## EXHIBIT B

### Permitted Title Exceptions

1. Ordinance No. 981210-W of the City of Austin, Texas, dated effective December 21, 1998, a copy of which is attached hereto as Exhibit B-1.
2. All easements, restrictions, reservations, dedications, conditions, and other title matters (other than leases and liens) now existing, that affect the Premises or the use thereof, whether of record or not.

EXHIBIT B-1

The Ordinance

See attached.

## EXHIBIT C

### Description of Additional Improvements

Tenant shall engage in construction on the Premises that will result in the transformation of the existing Palmer Auditorium into a performing arts center that will initially contain no less than two fully equipped public performance spaces. The larger of these spaces will be a concert and performance theater seating not less than 2,200 persons. A "black box" performance space that will seat as many as 240 persons in a flexible seating arrangement will be constructed coincident with the primary performance space. A public lobby will be provided as a common area for both performance spaces but each space is being designed with its support areas to be operated either independently or in conjunction with the other space. Tenant may, subject to raising sufficient funds therefor, develop additional spaces on the Premises, including a recital/rehearsal hall that will be suitable for rehearsals, small performances, meetings, etc. and a mid-size proscenium theater performance space that could seat at least 500 persons. The additional theater spaces will constitute a second and conditional phase of the Additional Improvements, which will be planned, developed, and constructed if and when sufficient funding is available for such planning, development, and construction, all in accordance with an annual capital improvements plan to be prepared by Tenant and provided to Landlord for review and approval and subject to the other applicable portions of this Lease. Each of the performance spaces will be serviced by discrete loading docks, dressing rooms, and technical spaces. The new facility will be constructed entirely within the footprint of the existing Palmer Auditorium with the exception of a portion of the "black box" theater some of the central mechanical plant equipment and the potential third and fourth performance/rehearsal spaces extending beyond the line of the current dome of Palmer Auditorium."

## EXHIBIT D

### Tenant's Mission Statement and Access Policy

#### THE LONG CENTER COMMITMENT TO ACCESS FOR AUSTIN COMMUNITY ARTS GROUPS

##### Mission Statement

The Long Center is founded on the belief that the performing arts are essential components in the quality of life of our community. Our performing arts organizations—from the smallest to the largest—deserve and need facilities that reflect their contribution to the community. Therefore, our mission is to create and manage a state-of-the-art, multi-venue facility that will host the broad spectrum of Austin's performing arts organizations.

##### Access Policy

The Long Center was founded because our community's thriving performing arts organizations need access to performance and rehearsal space, and because the public needs access to the performing arts. The availability of new performance space will strengthen Austin's existing arts organizations and enable the creation of new groups.

Consistent with The Long Center's commitment to access, The Long Center has developed an access policy for each of its performance spaces. The Joe R. and Teresa Lozano Long Center for the Performing Arts (formerly Palmer Auditorium) will initially contain two performance spaces: a large theater seating not less than 2,200 people and one studio theater seating up to 240 people.

- The large theater will enable Austin's largest community arts groups—Austin Symphony Orchestra, Austin Lyric Opera and Ballet Austin—to become resident in The Long Center. One or two other community non-profit arts groups may also become resident in the large theater. The Long Center anticipates that resident groups will fill most of the available schedule in the large theater.
- The studio theater's artistic mission is to present the best of Austin's community arts groups. This theater will be available to a wide range of local groups to enable them to present the best of their seasons at The Long Center. To this end, The Long Center has a goal that at least 50% of the utilization of the studio theater will be by small and/or arts groups. We pledge to work closely with representatives of the small and minority groups to ensure that our policies are clear, fair and well-communicated. Subject to the provisions of Exhibit C hereto with respect to a third theater space, the third theater space will also serve the purposes and groups described in this paragraph.

The Long Center is committed to fostering the development of Austin's community-based arts groups. Our access policies will always reflect this fundamental commitment.

## EXHIBIT F

### Additional Insurance Requirements

#### A. General Requirements

Tenant shall forward certificates of insurance with the endorsements required below to Landlord as verification of coverage within 14 calendar days after the Lease Occupancy Date, EXCEPT that Tenant shall have in place a policy of commercial general liability insurance meeting the requirements of this Lease commencing on the Effective Date. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the reasonable approval of Landlord.

Tenant shall not commence work until the required insurance is obtained and has been reviewed by Landlord. Approval of insurance by Landlord does not relieve or decrease the liability of Tenant hereunder and is not a limitation of liability on the part of Tenant.

Tenant must submit certificates of insurance for all contractors and/or subcontractors to Landlord prior to the commencement of work on the Additional Improvements.

Tenant's and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. Landlord will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

All endorsements naming Landlord as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: Director, Austin Convention Center  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767

The "other" insurance clause must not apply to Landlord where Landlord is an additional insured shown on any policy. It is intended that policies required in this Lease, covering both Landlord and Tenant, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Lease, Tenant, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

Landlord shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

Tenant shall not cause any insurance to be canceled nor permit any insurance to lapse during the Term.

Tenant and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

Landlord may review the insurance requirements set forth herein during the Term and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by Landlord based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and Tenant.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Tenant.

**B. Specific Requirements**

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Tenant's, its contractor's and subcontractor's policy shall apply to the State of Texas and include these endorsements in favor of Landlord:
  - (i) Waiver of Subrogation, Form WC 420304
  - (ii) Thirty days Notice of Cancellation, Form WC 420601

Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
  - (i) Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.
  - (ii) Independent contractor's coverage.
  - (iii) Products/completed operations liability for the duration of the warranty period.
- (b) The policy must also include these endorsements in favor of Landlord:
  - (i) Waiver of Subrogation, endorsement CG 2404
  - (ii) Thirty days notice of cancellation, endorsement CG 0205

- (iii) Landlord listed as an additional insured, endorsement CG 2010

Business Automobile Liability Insurance. Tenant, its contractor and subcontractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

- (a) The policy must include these endorsements in favor of the City of Austin:
  - (i) Waiver of subrogation, endorsement TE 2046A
  - (ii) Thirty days notice of cancellation, endorsement TE 0202A
  - (iii) Landlord listed as an additional insured, endorsement TE 9901B

Property Insurance. If any of Landlord's property is in the care, custody or control of Tenant, then Tenant shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of Landlord's property. If property is being transported or stored off site by Tenant, then transit and storage coverage must also be provided. Landlord shall be endorsed onto the policy as a loss payee.

Builders Risk Insurance. During the construction of the Additional Improvements, or any subsequent construction or repair of the Improvements, Tenant shall require its contractor to maintain an all risk builders risk insurance policy in the amount of the construction contract. The policy must name Landlord as loss payee as its interest may appear.

Hazardous Material Insurance. For work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Tenant and Landlord.
- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for



bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Tenant and Landlord.

Performance and Payment Bonds. Tenant shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Additional Improvements, to furnish and deliver to Landlord, legally issued surety bonds in a form approved by Landlord, with Landlord and Tenant named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Additional Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties satisfactory to Landlord, no rights obtain thereunder to Contractor, no construction of the Additional Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Tenant will be in material default under this Lease.

Payment Bond. Tenant shall require the general contractor to provide a payment surety bond legally issued, meeting the approval of Landlord, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. Tenant shall require contractor to provide a performance surety bond legally issued, meeting the approval of Landlord, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full and complete performance by the general contractor of these covenants and agreements contained in the contract documents.

#### Schedule 1.4

1. License Agreement between the City of Austin and the Austin Museum of Art Guild, Inc. for use of the One Texas Center parking facilities one weekend annually, for a period of up to 20 years beginning May 18, 1999.
2. Austin Energy paid for 200 parking spaces in the Parking Garage for use by its employees during regular working hours for an indefinite period.
3. Parking contract for the Parking Garage with the Austin Lyric Opera, effective December 1, 2003.
4. Temporary License Agreement between the City of Austin and Threadgill's for use of the One Texas Center parking facilities.